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2495. Circular Orders, Sudder Adawlut, ~~Madras~~ Madras 1805 to 1834.

Subj: L & L - Courts - Law courts - Sudder Dewany and Nizamat Adawlats - Circular Orders - Madras - 1834.

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CIRCULAR ORDERS

OF THE

COURT OF SUDR UDALUT.

29th January, 1805.

THE Court having taken into consideration the prayer of the petition, are of opinion, that, although the Regulations do not express that Company's paper shall, or may, be taken as security for the appeal costs, they do not forbid it; it therefore appearing to rest in the discretion of the Court to cause its admission or rejection—

Ordered, that the tender of the Government paper so as to cover the appeal costs or other costs in process of the Courts be received by those Judges to whom made in security for the performance of the decree, for the costs that may be awarded on appeal, and for the fees of the pleaders, as specified in Section XII. Regulation IV. A. D. 1802.

10th December, 1805.

It being understood by the Sudr Court that persons who have suits pending therein, and who, on account of the remoteness of their situation or other causes, are unable personally to attend, are in the habits of sending to the said courts some other person with a Mooktearnamah, or merely a Vakalutnamah, or by post to one of the Vakeels attached to the said Court; and as the Judges of the Sudr Udalut do not deem these Mooktearnamahs, and Vakalutnamahs, to be worthy of credit, both parties in the suit are exposed to various difficulties.—It is therefore deemed expedient that orders be sent to the Registers of the respective Zillahs directing them to attest and sign in verification, all papers of this sort, such as Mooktearnamahs,

Valalutnamahs, Ziminees, &c., which the parties may wish to transmit to the Sudr Court, in the same manner as prescribed by Clause second, Section IX. Regulation XVII. A. D. 1802.

20th September, 1806.

Letter from the Secretary to Government, dated 3d September, 1806.

Judicial Department.

To the Acting Register to the Court of Sudr and Foujdaree Udalut.

SIR,

I am directed by the Right Honorable the Governor in Council to acknowledge the receipt of your letter of the 23d ultimo, and to acquaint you for the information of the Court, that instructions have been issued to the Accountant General and Civil Auditor, to make arrangements for remitting the fees of the Vakeels of the Sudr Court to the Presidency, through the medium of the treasuries of the Collectors.

15th November, 1806.

Circular to the Collectors.

SIR,

The Sudr Udalut having represented to Government, a difficulty in obtaining payment of fees due to their pleaders, I request, in order to remove such difficulty, that you will receive all such sums as may be tendered to you by the Zillah Judge on that account, and grant bills for the same upon the Right Honorable the Governor in Council in favour of the Register for the time being of the Sudr Udalut, payable at thirty days sight.

You will state in the body of the Bill value received of ——*on account of fees due to the pleaders of the Sudr Udalut,* transmitting me a monthly register of such Bills as you may draw for the amount of which you will credit the head of "General Treasury."

Any further information relative to the particular causes on account of which the fees are received, or to whom they are payable, will be transmitted direct from the Judge to the Sudr Udalut; your duty is confined to

receiving the money and granting the bill as above directed.

I am, &c.,

(Signed) CECIL SMITH, A. G.

(True Copies.)

(Signed) E. C. GREENWAY,

Sec. to Government.

FORT ST. GEORGE, *Acct. Genls. Office:* 9th October, 1806.

20th January, 1807.

The Court recognizing the expediency of introducing the utmost uniformity in all the several Courts, and deeming it to be essential that the usage of the Sudr Udalut, should as far as possible regulate that of the inferior Courts—

Ordered, that the Judges of the Provincial Courts, and the Zillah Udaluts be, by precept, instructed to provide chairs for the accommodation of their Law Officers in Court, taking due care in the disposition thereof, to place the seat of the Mooftee on the right hand of the bench; and that of the Pundit on the left.

16th May, 1807.

It is ordered that the Zillah Judges be required to transmit for the information of the Court.

A statement shewing the amount value of property held under decrees of their Courts respectively, from the earliest period of their institution, to the 31st December, 1806

———also

An estimate of the amount of property under litigation

———the same period.

And it is further ordered, that they continue to furnish the same with their half yearly reports, prescribed in Section X. Regulation XIII. A.D. 1802, drawn out in the following form* to be sent to them for that purpose.

24th May, 1808.

"The Register lays before the Court the following letter from the Register to the Provincial Court in the Western

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Form omitted.

Division, submitting by direction of that Court, draft of a Regulation for modifying certain provisions hitherto in force, regarding the securities required from parties appellant and respondent."

The draft proposed by the Provincial Court is founded on the supposition, that an appeal from the decree of a lower Court cannot in any case be admitted, until the security prescribed in Clause fifth, Section XII. Regulation IV. A. D. 1802, shall have been furnished by the party appealing; and it has for its object to relieve from the supposed operation of the said Clause, under the erroneous construction thereto given, plaintiffs non-suited and wishing to appeal; and to establish a process in cases wherein defendants appealing may be unable to give the security thereby required.

The security, in question, consists in respect of real property in a sum equal to one year's produce of the property adjudged; and in all other cases, in an amount equal to the sum of money or value of the thing decreed.

And as stated in the clause, this security is required for the express purpose of suspending the execution of the decree appealed from—during the appeal.

In applying Clause fifth to any particular case of appeal from the decree of a Zillah Court, it is obviously essential, in the first place, to inquire how far such security is necessary from the purpose noted; for if it should be found that the decree complained of has not transferred the possession of property, and that no part thereof which required execution under the Regulations could be suspended, it must of course follow that such case was not in the contemplation of the Clause referred to.

But in case of non-suit there is no transfer of property; and in a decree to that effect there cannot be any part, wherein executory process could issue, save in what regards the payment of fees, which under Section IX. Regulation X. A. D. 1802, may not be stayed or postponed, in consequence of an appeal. There is not any part of such decree to suspend, and in the event of an appeal therefrom, cannot be any object in demanding security for the purpose of suspending its execution.

Hence plaintiffs non-suited and appealing, are not under the existing Regulations subject to the operation of Clause fifth, aforesaid.

With regard to defendants appealing the case is different. But although the decree they appeal from does ad-

judge a transfer of property, and must at the demand of the plaintiff, who has made good his claim, be carried into execution, unless the security specified in Clause fifth shall have been furnished; still the refusal or omission of the party appealing to produce such security cannot possibly constitute a ground for rejecting his petition of appeal.

In all authorized cases of appeal the admission of the petition of appeal, and the suspension of process of execution on the decree appealed from, depend upon the tender of different securities. The appealing party, desirous of staying execution of the degree passed against him, *during the trial of his appeal from it* must at the time of preferring his appeal, or within a reasonable time to be fixed for the purpose, deliver the particular security provided by Clause fifth. If the appellant do not give such security, and the decree shall consequeutly be put in force against him, *notwithstanding his appeal*, the prescribed security is to be taken from the respondent, the winning party in the lower Court, in whose favor the decree is executed, for the due performance of whatever judgment may be passed on the appeal; and without such security the decree should not be executed, but the property adjudged should be held in attachment during the appeal according to Clause ninth, which provides for cases, "wherein neither the appellant nor respondent may be able to give the prescribed securities for staying the execution of the decree."

Section XIV. of Regulation IV. A. D. 1802, is calculated to provide against any transfer, pending an appeal to a superior Court, of property adjudged to the plaintiff in the lower Court, which shall have been left in possession of the defendant, appealing, under the prescribed security, or of which possession shall have been granted to the plaintiff, in consequence of the defendant's failing to give such security.

The several Clauses, bearing upon this subject in Section XI. of Regulation IV. have analogous Clauses in Section X. of Regulation V. 1802, respecting appeals to the Sudr Udalut; to which the principles of the rules contained in Section XIV. of Regulation IV. are therein declared to be equally appplicable.

With this impression as to the adequacy of the provisions of the existing Regulations to every purpose which the suggested modification is intended to answer, the Court are of opinion that the proposed new Regulation is wholly unnecessary.

On reference to the extract from the proceedings of the Provincial Court, accompanying the draft sent up, the Court observe that in the view taken of the question by the Second Judge, he did not concur with the First Judge in recommending the new Regulation for adoption. The Court have, however, on two former occasions been called upon to explain the application of Clause fifth, wherein it had been construed in a sense similar to that held by the First Judge, and the present recurrence leads them to apprehend the error may have obtained more generally than they had at first supposed.

With a view therefore to guard against future inconvenience to parties appellant, the Court have resolved to communicate their construction of the point, which has been discussed, for the information and guidance generally of the Provincial and Zillah Courts.

Under Section XII. Regulation IX. A. D. 1802, it is ordered that all proceedings and documents, received from the Provincial Court in the Western Division, be with extract of these proceedings transmitted to the Acting Chief Secretary to the Government, for the purpose of being laid before the Honorable the Governor in Council.

Answer from Government, 4th May, 1808.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 8th March last, and to acquaint you that the Governor in Council concurs entirely in the opinion stated by the Court, that the provisions of the existing regulations respecting the securities to be taken from parties engaged in suits require no alteration.

30th August, 1808.

The Register lays before the Court the following letter from the Secretary to Government in the Judicial Department, communicating the resolution of the Honorable the Governor in Council that all indents for stationery required in the Judicial Department shall be regulated and sanctioned by the Sudr Udalut.

The Register also lays before the Court the draft of a form of indent for stationery, shewing the supply required, the quantity received and expended in the preceding year, and the quantity remaining at its close.

Ordered that a copy of the above form* be transmitted to each of the Provincial and Zillah Courts, by precept commanding strict observance thereof, as well in regard to the description of paper, on which the form is drawn out, as in all other respects.

And the Judges in the preparation of their indents agreeably to the form transmitted will, in filling up the 6th column, "supply required"—keep in view the rules contained in Mr. Secretary Greenway's letter of 22d June last, and the provisions of Regulation IV. A. D. 1808, which, by prescribing the use of stamp paper for decrees of Court, exhibits, and other documents, and pointing out the mode in which such paper shall be furnished, must of consequence lessen the amount required from the Board of Trade.

20*th December*, 1808.

Ordered, that the security bond be transmitted to the Provincial Court in the Northern Division, with directions to return it to the Zillah Court there to be deposited until the decree of this Court shall have been executed.

And the Provincial Court will at the same time instruct the Judge of the Zillah of Masulipatam—and similar instructions will be by them sent to the other Judges in the Northern Division—to keep in his possession all securities for costs of suit in appeal, certifying to the appeal Court that such securities have been received from the parties, and that they are by him considered to be fully adequate to the purpose for which they are intended.

8*th August*, 1809.

The Court resolve that a copy of the letter be with one set of the specimens of stampt paper transmitted to each of the Provincial and Zillah Courts under its superintendence, and that they be instructed to deposit them among their records as specimens to refer to in case any doubt may arise in regard to the paper prescribed to them.

The Court at the same time think it necessary to observe that it can only be permitted that one side of the stamp paper should be written on, and that in each division some standard should be determined on as the rule by which the

* Form omitted.

number of lines and words to be admitted in proportion to the size of each species of stamp paper may be publicly known; but the Court are of opinion that, owing to the different languages and manners of writing which take place in the distant parts of the Provinces of the Presidency of Fort St. George, any standard transmitted from this Court might be liable to error, they, therefore, resolve that the several Provincial Courts be instructed to communicate with the Zillah Courts in their respective divisions and to fix some standard adapted for the languages and customary manner of writing in the respective divisions.

To the Register to the Court of Sudr Udalut at Fort St. George.

SIR,

Agreeably to the requisition contained in your letter of the 16th June, I forward herewith twenty five specimens of stampt paper.

There are ten different sizes of stampt paper in each bundle of specimens, and they are numbered from 1 to 10; the impression of the die, and the purpose for which each of the different sizes are used, are entered on the face of the specimens. For instance, size No. 1, is used for three different purposes,—1st, for Sunnuds for Cauzees and Vakeels; 2d, It is used for law papers, value 2 rupees; 3d, It is used for Rowannah papers, value 20 rupees. The impressions of the corresponding dies will be found stamped on the specimen with an explanatory note, viz., that it is either for Sunnuds or law papers or Rowannahs.

I do not know what I can add in explanation of the specimens beyond what will occur on an inspection of them and reference to Regulations cited.

(Signed) J. H. PEILE,

Supt. Stamps.

20th July, 1809.

7th November, 1809.

Having observed, as well from a perusal of the foregoing letters, as from an examination of the abstract Registers of Causes decided in the Zillah Courts, that a difference of practice has prevailed in cases where the defendants have died pending the issue of the suits, the Court consider it expedient to determine, on general principles, the process to be observed in such cases.

When the Defendant dies after the pleadings have been filed, the witnesses examined, and the exhibits have been received, the case admits of no difficulty. The parties have been fully heard, and it remains with the Judge to pass a decree on the merits of the cause, in conformity with Section IX. Regulation III. A. D. 1802, when if the decision should be against the Defendant, his estate is liable to all costs of suit.

For cases, wherein the Defendant dies at any period after the institution of the suit, and before the cause has been fully investigated, there appears to be no express provision in the Regulations. There needs however little argument to show the error of dismissing the suit in such cases with costs against the plaintiff, for he must either be permitted to include the amount of such costs in a new suit against the heirs of the deceased Defendant, or be made to suffer by an event over which he could have no control. The latter mode would be obviously unjust; the former, that of permitting the costs to be included in a new suit, would increase the expense of litigation without any concomitant advantage; it would serve no other purpose than ultimately to impose on the party cast, an additional burden, for which there seems to be no just cause.

The Court are, therefore, of opinion that in these cases a summons should be issued to the heirs of the deceased defendant, in other words, that the Plaintiff should be allowed to continue his suit. This mode of proceeding appears to be sanctioned by the principle of Section V. Regulation III. A. D. 1802, which permits a plaintiff to supply a defect in his original suit, which may have arisen from his own mistake, inadvertence, or other cause. It is moreover consonant to that rule of equity which is found to correspond with the law of India, viz. "That if any property or right in litigation, vested in a plaintiff is transmitted to another, the person to whom it is transmitted is entitled to supply the defects of the suit, if become defective, and to continue it, or, at least, to have the benefit of it, if abated. And that if any property or right, before vested in a Defendant, becomes transmitted to another, the plaintiff is entitled to render the suit perfect, if become defective, or to continue it, if abated, against the person to whom the property or right is transferred."

It will of course be observed that the foregoing rule applies only to suits wherein a right or property is litigated; it is wholly inapplicable to actions for the redress of

injuries. In these cases, the suit terminates on the death of either party, and the assessment of the costs to be paid by the respective parties or their representatives, must be left to the discretion of the Judge. But on general principles the Court are of opinion that where suits may terminate, in consequence of the death of either party, without any default, the surviving party should pay only the costs which he may have incurred, and that the claim of the Vakeel of the deceased party should be enforced against his estate, under the security which he is required to give before the Vakeel can act.

30th March, 1810.

Ordered that the Western Provincial Court be instructed that summonses and orders to Nazirs are not within the provisions for stampt paper; and that the depositions of *vivâ voce* evidences, taken down in Court, being exclusively for the use of the Courts, before whom such witnesses are examined, and being prepared by the Courts to remain with their own records, are not required to be written on stampt paper.

But all copies of such papers, as well as copies of any judicial papers, which may be furnished to the parties in causes, their Vakeels, or other persons, on their application, or in consequence of any regulation requiring them to take such copies, must be transcribed on stampt paper.

And the Court direct that the Western Court of Appeal be further instructed, that the receipts of pleaders for their fees, and Vakalutnamahs, Mooktarnamahs, security bonds, Ikrarnamahs, and Razeenamahs, delivered to the Courts of Justice, are within the provisions of Sections X. and XI. Regulation VIII. of 1808; the payment for fees being from individuals to individuals, though made through the Courts; and the above descriptions of papers being all *legal instruments*.

19th July, 1811.

The Court direct that forms be transmitted to the several Zillah judges to be observed by them in the preparation in future of their half-yearly statements of property held under their decrees, and of the estimates of property in litigation.

I.

Statement shewing the amount value of property held under decrees passed by the Court of the Zillah of———— between the 1st January and 30th of June, 1811.

Number of causes decided.	Amount sued for in the petitions.			Amount decreed.		

II.

Estimate of the amount of property under litigation in the Court of the Zillah of————on the 1st day of July, 1811.

Number of the causes depending.	Amount of causes remaining undecided as specified in the petitions.		

10*th May,* 1814.

The Court, adverting to the average number of causes decided in the Zillah Courts during the last year, consider it proper to adopt a rule which appears to have been established by the Sudr Dewannee Udalut at Calcutta; and

they accordingly direct that whenever the number of causes decided on trial, (exclusive of non-suits upon default, and adjustments by Razeenamahs), either by the Judge, the Assistant Judge, or the Register of a Zillah Court shall fall short of ten, the reasons which may have prevented the decision of more causes shall be stated in the letter accompanying the monthly abstract Register, prescribed by Section X. Regulation XIII. of 1802.

In fixing this limitation the Court desire to have it understood that they do not consider ten to be the average number of causes which may reasonably be expected to be decided monthly by each of the officers above-mentioned. The Court, however, will have regard as well to the time occasionally occupied in the investigation of particular causes, as to other accidental circumstances which may sometimes prevent the passing of a greater number of decisions, and which indeed the Court will be always ready to admit in explanation of even a lesser number, provided such circumstances be stated for their information.

The Court further direct that the attention of the Zillah Judges be called to that part of Section X. Regulation XIII. of 1802, which prescribes that the Abstract Register for each month shall be despatched to the Sudr Udalut by the 15th of the following month.

The Court likewise direct that in the preparation of the half yearly reports of causes depending, prescribed by Section XI. Regulation XIII. of 1802, the Zillah Judges will be careful to furnish the explanation required in the column of "Remarks," when any suits are entered in such half yearly report, which have been inserted in any preceding half yearly report.

4th August, 1814.

By clause CXIII. of the 53d of George the Third, Cap. 155, the Courts of Sudr and Foujdaree Udalut, are empowerd to execute or cause to be executed upon all persons subject to their jurisdiction, all manner of lawful process of arrest within the limits of the Town of Madras, provided such process shall be in writing, and shall have under written or endorsed thereon, or otherwise annexed thereto, a translation thereof or of the substance thereof, in the English language and character, signed by one of the Judges of the Court.

This specific enactment would seem to preclude the execution of process, issuing from any of the lower Courts within the jurisdiction of his Majesty's Court; and it therefore becomes necessary to modify the instructions contained in the circular letter of the 2d October, 1804.

The Court, therefore, direct that when a Judge, or Magistrate, of a Zillah Court, or a Court of Appeal and Circuit shall have occasion to issue process of arrest, either criminal or civil, against a person who shall have taken refuge within the limits of the jurisdiction of the Supreme Court of Judicature, such process shall have endorsed thereupon, or annexed thereto, a translation thereof in English, and shall be enclosed in a letter addressed to the Register of the Court of Sudr and Foujdaree Udalut, to be delivered by the person or persons charged with the execution of the said process, whereupon an endorsement to the following effect shall be made thereon under the signature of one of the Judges of the said Court, and the process shall be delivered to the person or persons to whom it shall be addressed.

Form of Endorsement.

To ———————————————— Greeting.

These are to command you that you take the body of the within named defendant A. B. in satisfaction of the annexed warrant.

Given under my hand this day of in the year of our Lord 181

(Signed) C. D.

Puisne Judge of the Court of Sudr and Foujdaree Udalut.

17th January, 1815.

It has occurred to the Court that in making up the record of proceedings in cases of appeal, the translation of several documents might be omitted without inconvenience, while the establishments of the lower Courts would be relieved from a great deal of unnecessary labour. The Court, therefore, direct that henceforth the translation of the notice, required by Section II. Regulation II. of 1811, to be served upon the Defendant, his accredited agent, or representative—of the securities furnished by the parties respectively—of Vakalutnamahs executed to Vakeels—and of summonses to witnesses, be omitted; and that, in lieu thereof, a short memorandum shewing the date, &c. of the seve-

ral processes and documents above-mentioned be inserted as follows, viz.

No.——————— Vakalutnamh of the plaintiff nominating———————to be his Pleader, dated the————

No.——————security bond of————— binding himself to be security for the fees of the Pleader employed by the Plaintiff, dated————

No.——————Notice to the Defendant, requiring his appearance, &c. dated the————

No.——————security bond of————— binding himself for the personal attendance of the Defendant when required, and for the performance of the decree, dated the————

No.——————summons to the witnesses————— requiring their attendance on the——————dated the————

The same course is to be pursued withr espect to any other process or order of the Court, which may be issued pending the cause, and shall not be connected with its merits.

The translation of the record will then be limited to the plaint, the answer, the reply, and the rejoinder, and the supplemental pleadings when admitted, the deeds and documents filed by the parties, their examinations if taken, and the examinations of the witnesses, together with the decree of the Court of original jurisdiction; and in cases which may be decided by the Provincial Court in appeal will be added the petition of appeal, the answer, reply, and rejoinder, &c. filed in that Court with the judgment on the appeal.

The originals of the processes and documents above-mentioned will continue to be sent up with the original record of proceedings in each case.

The Court further direct that in all cases wherein a native date may be mentioned, the corresponding English date shall be specified.

21*st February*, 1815.

The Court having had under consideration the monthly reports received from the several Courts of Judicature, for the months composing the half year which expired on the 31st December last, observe that the number of causes

decided on trial monthly by the Judges, the Assistant Judges, and the Registers of the Zillah Courts respectively has but in few instances amounted to the number of ten; and that the reasons assigned for the deficiency are in most cases less satisfactory than the Court could desire them to be, while in other cases the instructions issued under date the 10th of May last have been altogether neglected.—The instances in which this neglect has been shewn will be the subject of particular animadversion.

The Court, however, deem it expedient to recall the attention of the Courts, generally, to the circular precept of the 10th May last, in which it was observed that the Court did not consider ten to be the average number of causes which might reasonably be expected to be decided monthly by each of the judicial officers. On a further consideration of the subject, they are satisfied that the number of decisions required is moderate, and that though the Judges and the Registers may occasionally by a pressure of business on the criminal side of the Court, be prevented from deciding more than ten causes, satisfactory reasons can very seldom be assigned for their deciding less than that number, or than sixty in the half year; and that the Assistant Judges whose duties are restricted to the trial of civil suits, cannot have any solid plea, except sickness, to urge in excuse for the number of their monthly decisions falling short of twenty, or one hundred and twenty in the half year.

In again recording their opinion that the number of decisions above described may be fairly required from the respective judicial officers, the Court deem it proper to state for general information, that they will consider it their especial duty to pay strict attention to any deficiency that may occur, and to the reasons assigned for it, in order that no doubt may remain that the powers of the judicial establishment are fairly and zealously applied to the purposes of its institution.

22d February, 1815.

From the above communication it appears that it has been the practice in the Zillah Court of Bellary to register Vakalutnamahs in the register books of the Zillah, and to charge upon such registry, the fee authorized for the registry of certain deeds by Section XIV. Regution XVII. of 1802.

The Judge states the practice to have originated in consequence of the circular orders issued from this Court, and recorded in their proceedings of the 10th December, 1805. The orders referred to have been misconstrued by the Judge, they direct that Mookhtarnamahs, Vakalutnamahs, Zamineés, and other like papers shall be attested and signed in verification by the Register in the same manner as is prescribed by Clause second, Section IX. Regulation XVII. of 1802, and the reasons for such order are stated to be, that great negligence having prevailed in the mode of transmitting authorities to the Vakeels at the Presidency to act on behalf of persons in the country, Vakalutnamahs, &c., were produced in Court which the Judges did not deem to be worthy of credit; the consequence of which was that the parties in suits were exposed to various difficulties.

Regulation XVII. of 1802, establishes a registry, for certain particular deeds which are enumerated in Section III. of that Regulation, and no deed other than such as are there set forth can be registered under the provisions of that regulation.

The attestation required by the Court to Vakalutnamahs, &c., is to be made by the Register of the Court of Judicature, causing the party executing such Vakalutnamah (whether it be the principal or his Mookhtarkar) to sign the same in his presence, and afterwards subscribing his name and official designation, with the date on which the instrument was so executed in his presence.

The levy of fees upon the registry of Vakalutnamahs under the misconstruction above adverted to being unauthorized and illegal, it is ordered that in all cases where it is practicable the fee or fees so received be returned by the Register.

3d April, 1815.

The Court of Sudr Udalut having deemed it conducive to regularity and dispatch in conducting the trials of civil causes that a general form of proceeding should be observed in the several Courts of Judicature, a form has accordingly been drafted, and being approved by the Court, it is ordered that copies be transmitted to the several Provincial Courts of Appeal for their information and guidance, together with instructions to forward transcripts thereof to the Judges of the Zillahs within their division, and to

direct that they will conform thereto in their future proceedings.

FORM.

In cases where the defendant may not appear, or may refuse to give answer, the motion of the plaintiff's pleader to have the cause set down for trial *ex parte*, and the order of the Court to that effect will occupy the numbers succeeding the report of the Nazir; and the plaintiff's exhibits, list of witnesses, &c., will follow in ordinary course.

Should the matter in dispute involve the examination of accounts, the Provincial and Zillah Courts will of course recommend to the parties to go to arbitration, under the provisions of Regulation XXI. A. D. 1802, and the acquiescence of the parties in such recommendation or their rejection of it with the order of Court, which may be passed in consequence, should be entered on the record, whether it be for referring the suit to arbitration or setting it down for trial by the Court.

The several Courts being vested with a discretionary authority to reject vouchers tendered to them by the parties in suits, assigning their reasons for such rejection, the Court have considered it to be proper that a general form should be observed in such cases and the following form appearing to be free from objection is enjoined for general observance.

Provincial or Zillah Udalut.

(Name.)

Suit No. of (name) Plantiff—Versus (name) Defendant.

Exhibit on the part of (P. or D.) "Rejected" for the following reason.

(Here insert the reason or reasons) returned in Court this day of A. D.

(Signed) Judges name.

If not appealable, or if appealable, and the party does not signify his intention to appeal, the Court is to pass an order to the Nazir to carry the same into execution, by receiving the amount from the party cast—and if not paid in ( ) days to levy the same by the attachment, and sale of his effects by public auction, of which he is to give due notice and to keep regular accounts of sales, to be referred to by the No. of the cause in the Register if at any time necessary.

Should a Petition of Appeal be admitted, on the enactment of Clause 6, Section XII. Regulation IV. 1802 being complied with and noticed in the diary, the petition is to be *indorsed*, and transmitted as prescribed by Clause 7, and the notice to be given to the appellant is also to form part of the record and to be referred to in the diary.

The Court have observed that Vakeels have not unfrequently been permitted to introduce into the questions which they have proposed almost the whole of the evidence which their witnessess were expected to deliver. It is evident that a mode of examining which leaves little for the witness to add but a simple asseveration, cannot be favourable to the discovery of truth, but must, on the contrary, facilitate concealment, and afford strong temptation to the assertion of falsehoods which can only be detected by close cross examination.

The Court trust that the Provincial and Zillah Courts will watch over and correct the practice of the Vakeels in this particular, directing them to propose their interrogatories in such general terms as shall simply elicit the information which the witnesses may possess on the points at issue; and carefully to avoid leading questions which may suggest a particular answer, or may have a direct tendency to such suggestion.

26th December, 1816.

Read again letter, dated the 3d instant, from the Secretary to Government in the Judicial Department, conveying the approbation of the Governor in Council to the forms of statements submitted with extract from the Courts' proceedings of the 21st ultimo.

The statements in question are intended to convey as much as possible of the information required by the Honorable Court of Directors in the 72d paragraph of their letter, dated the 29th April, 1814, and they are to be furnished half yearly by the several Courts.

In order to facilitate the preparation of these statements by the Zillah and Provincial Courts respectively, it is necessary that in the monthly abstract Registers of causes decided the situation in life of the parties in each suit should be described whether as Zemindars, Renters, or Ryots, &c., and the same particulars should be stated in the register of suits filed. The several Zillah Judges will therefore issue the requisite instructions for this purpose, and they will

also issue such other instructions as may appear to them calculated to attain the object in view.

The columns headed "instituted and referred" are intended to contain the number and amount of suits instituted or referred during the preceding six months, and not the number and amount of suits instituted or referred, and remaining undecided at the date of the statement. The Court are not aware that any other explanation of these statements is necessary; but if doubts should arise with respect to any point connected with them, the several Courts will hasten to submit such doubts for the instructions of the Sudr Udalut.

The Court direct that a copy of the Form* A. be transmitted to each of the Zillah Courts, with instructions to despatch the requisite statement to the Court of Sudr Udalut as soon as possible after the 1st of January and 1st of July in each year, beginning with July next ensuing.

(Sent following Circular letter A.)

The Court also direct that a copy of the Form* B. be sent to each of the Provincial Courts with the like instructions.

(Sent following Circular letter B.)

4th March, 1817.

The Court have observed in the reports submitted to them several cases in which decrees have been passed by Village Moonsifs for sums beyond the amount to which their jurisdiction is limited by Clause first, Section V. Regulation IV. of 1816, and their directions have been required as to the mode of procedure to be adopted in such cases by the Zillah Judges when complaints are brought before them of such excess of authority.

The Court deem it advisable to communicate their opinion on this subject for the guidance of the lower Courts.

No direct interference or control is provided for, to be exercised by the Zillah Judges over the Village Moonsifs under the Regulations, except on the charges specified in Clause third, Section IV. Regulation IV. of 1816. But it is provided by Section XXIX. of the same Regulation, that the decrees of Village Moonsifs shall not be carried into execution in less than thirty days after the date on which

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* Forms omitted.

copies of the decrees may have been furnished or tendered to the parties or their Vakeels. Section XXX. prescribes that applications shall be made by the parties for the enforcement of the decrees upon which the property of the defendant shall be attached, and that notice shall be sent to the District Moonsif who will send a Peon to sell the attached property.

Now it is evidently the duty of the District Moonsif to satisfy himself of the legality of the decree which he is called upon to execute, by reference to the reports which the Village Moonsifs are directed to transmit to them every month, by Section XXXVI. Regulation IV. of 1816; and a district Moonsif enforcing an illegal decision would render himself amenable to the penalties of some one of the Clauses of Section VII. Regulation VI. of 1816, according to the culpability of his act. No evil therefore can accrue, in general, from illegal decisions passed by Village Moonsifs, as they would remain a dead letter and could not be enforced. But in all cases where corruption or partiality has actuated the Moonsifs they may be brought before the Judge and their decrees annulled; besides which both Village and District Moonsifs are amenable to prosecutions by the parties aggrieved for unwarranted acts of authority.

21*st August*, 1817.

Resolution of the Right Honorable the Governor in Council, under date 11th August, 1817.

"The Right Honorable the Governor in Council, having taken into consideration the necessity of providing for the efficient discharge of the duties of those Officers in the Judicial, Revenue, and Commercial, Departments, who, though not absent from their stations, may, in consequence of ill health or other cause, be absent from duty, has been pleased to resolve that the rules now in force with regard to such Officers when absent from their respective stations shall also be applicable to them when absent from duty only, and that leave for such absence from duty, either prospective or retrospective as the case may be, shall accordingly be solicited from the Governor in Council through the regular channel."

1*st December*, 1817.

In order to an effectual exercise of that superintendence and controul which may be expected to ensure a scrupul-

ous attention on the part of the native judicatories to a discharge of their new and important duties, it will be particularly requisite that the Judges of the Zillah Courts should carefully inspect the monthly reports required to be sent up to them under the provisions of the Regulations IV. V. VI. and VII. of 1816, and issue such orders as may be suggested on an examination of the said reports.

In the performance of this duty the Judges will be careful to notice all instances in which it may appear that any of the native judicatories have tried causes of which they were not competent to take cognizance, or have, in other respects, deviated from the rules which have been enacted for their guidance. Any observations which it may be found necessary to record on the subject of the Reports forwarded by the Village Moonsifs and Punchayets should be communicated through the District Moonsif, in order that the latter officer, by having his attention directed to the several instances in which these lower judicatories may have exceeded their authority, may be led to exercise with circumspection the authority vested in him by the Regulations in regard to the execution of their decrees. With this view it will be proper, as the Court remarked in their circular instructions of the 4th March last, that before any measures are taken for carrying into execution the decree of a Village Moonsif, the District Moonsif should ascertain the amount decreed, by reference to the monthly report required to be transmitted under Section XXXVI. Regulation IV. of 1816; and that, prior to the execution of any decree passed either by a Village Moonsif or Village Punchayet, he should by a like reference, be careful to satisfy himself that the suit is neither for real property nor for personal damages and that the interest has been calculated agreeably to the Regulations.

In the like manner it will be the duty of the Zillah Judges to ascertain, by an attentive examination of the reports required to be submitted to them by the Talook Moonsifs and Punchayets, whether those respective judicatories have observed the limits prescribed by the Regulations, and in each case to issue such instructions as the circumstances shall appear to demand.

The Court expect that the Judges of the several Zillahs will exercise the trust reposed in them with a degree of vigilance and zeal commensurate with the object proposed, and that they will report, for the information of the Sudr Udalut, all such cases of departure from the regulations as shall be deemed particularly deserving of notice. The

Court also expect that the Judges of the Zillah Courts will refer, for their consideration and orders, all cases of doubt and difficulty which may occur in the discharge of the duty here prescribed to them, and that they will submit, generally, such observations as may be suggested from time to time under the operation of the system.

24th December, 1817.

The provisions of Clause 2d, Section XV. Regulation XV. of 1816, are positive as to the language in which the originals of decrees are to be written. To the decrees so drawn out, and which are to be kept as records of Court, are to be annexed translations into one of the current languages of the country—these translations will generally be in the language of the district, in which the Courts are respectively established, and will serve for all purposes of reference, required by the parties or their Vakeels or by the Officers of the Court.

The cases, in which certified copies of decrees are required to be produced, under the operation of Regulation XV. of 1816, are few, and it is provided by Section XXX. Regulation XIII. of 1816, that parties may take copies on unstampt paper, these copies sufficing for the satisfaction of the parties themselves, though they cannot be certified, nor received as evidence in a Court of Justice.

Whenever certified copies are required to be produced for any Judicial purpose, such copies must be of the Original Decree; that is of the English, and may have a certified translation annexed to them, or not at the option of the party, who, by Clause 6th Section XV. Regulation XV. of 1816, may choose in what language such translation shall be furnished to him.

23d February, 1818.

Instances having lately fallen within the observation of the Court in which the Judges of the Zillah Courts have authorized the District Moonsifs to adjourn pending the vacation of the Zillah Court, and it appearing to the Court that the adjournment so authorized may frequently be attended with much public inconvenience.

The Court of Sudr Udalut deem it necessary to explain, for the general information of the Judges of the Zillah

Courts, that the orders which may be issued from time to time by the Court of Sudr Udalut for the adjournment of the Zillah Courts are not intended to convey any authority to the Judges of those Courts to suspend the business of the District Moonsifs within their respective Jurisdictions, it not being considered expedient that the periodical vacations of the Zillah Courts should occasion any impediment to the performance of the general duties with which those officers are entrusted.

30th April, 1818.

The Court direct that copies of all decrees in appeal which may have been passed by this Court subsequently to the 12th of July, 1817, be prepared and duly authenticated by the Register and transmitted to the Courts from whose judgments such appeals have respectively been preferred, as well for the information of those Courts, as to enable them, by reference thereto, duly to execute all such orders as this Court may issue, grounded upon, or having reference to such decrees.

The Court further direct that this rule be observed with respect to all decrees in appeal which may hereafter be passed in the Court of Sudr Udalut, and that a copy of this order be communicated for the information of each of the Provincial Courts of appeal.

25th June, 1819.

In consequence of instructions received from the Right Honorable the Governor in Council, I am directed by the Judges of the Court of Sudr and Foujdaree Udalut to desire, that you will state the number of days in the half year just expiring, during which you and your Register were absent, otherwise than when the Court to which you are appointed was closed.

You are required to transmit a similar statement at the close of each half year.

27th September, 1819.

I am directed by the Judges of the Sudr Udalut, to forward to you, copy of a letter from the Secretary to Government in the Judicial Department, under date 16th ultimo, and with reference to that communication, you

are requested to be careful not to disburse any sums that are not strictly judicial charges.

I am also directed at the same time to transmit to you, forms* of annual statement of charges; and the Judges request, that the statement submitted by you in future, may be framed strictly in conformity to these forms.

You will observe, that all the fixed charges, such as salaries, and the pay of the Native Establishment, which have been permanently settled and sanctioned by Government, and which are not liable to fluctuate yearly, also the usual Saderwarid expenses, as those incurred in the purchase of ink, oil, paper, and other articles for the use of the Court, which are to be disbursed on the responsibility of the Judges, are required to be forwarded for audit only. —But all contingent charges, such as the batta to the servants on Circuit, the hire of additional servants employed *pro-tempore*, the expense of conveying the records, &c., with the Court of Circuit, in short, all such charges as necessarily vary from year to year, must be specifically stated in detail, and forwarded for the sanction of Government. All estimates of charges, you will also perceive, are unnecessary. In lieu of these, a column, shewing the amount of disbursement in the preceding year, is inserted in the form of statement. Every new charge, whether Saderwarid or otherwise, that it may appear necessary to incur, must form the subject of a special reference by letter.

You are further directed to be careful to transmit these statements, within one month after the expiration of the fusly.

From Government dated 16th August, 1819.

To the Register to the Court of Sudr Udalut.

SIR,

I am directed to acknowledge the receipt of your letter of the 29th ultimo and to state that the Governor in Council authorizes the Judges of the several Courts to transfer to the Collectors the charge to which reference is there made, in order that they may respectively be debited to the proper departments.

I have the honor to be, &c.

(Signed) D. HILL, *Sec. to Govt.*

FORT ST. GEORGE, 16*th August*, 1819.

Forms Omitted.

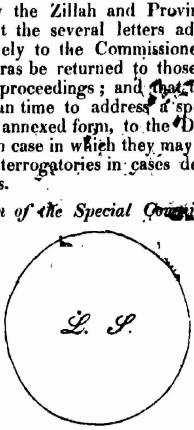
30th April, 1821.

I am directed by the Judges of the Court of Sudr Udalut to transmit, for your information and guidance, the annexed extract from their proceedings of the 12th March, 1816, together with a copy of the form of special commission therein prescribed.

Proceedings 12*th March,* 1816.

A reference having been made from this Court to the Right Honorable the Governor in Council, in order to obtain the opinion of the Company's Advocate General on certain points relative to the examination of European witnesses, by the Commissioner for the examination of witnesses at Madras; and as some time may yet elapse before an answer may be received to that reference, and before a general commission may be issued authorizing the Deputy Register of the Court to examine witnesses on interrogatories sent by the Zillah and Provincial Courts, the Court order that the several letters addressed by those Courts respectively to the Commissioner for examining witnesses at Madras be returned to those Courts with extract from these proceedings; and that the Judges be directed in the mean time to address a special commission, according to the annexed form, to the Deputy Register of the Court in each case in which they may require evidence to be taken on interrogatories in cases depending in their respective Courts.

Form of the Special Commission.



The Zillah Court of*

To A. B.

G. H. Judge. The said Zillah* Court of have appointed you, and by these presents do give unto you full

* or Provincial.

power and authority, diligently to examine
upon certain interrogatories herewith transmitted, as well on the part of C. D. complainant,* as on the part of E. F. defendant,* and you are hereby accordingly authorized and required at certain days and places to be appointed by you for that purpose to cause the said
to come before you, and then and there examine each† of them apart upon the said interrogatories on their† respective oaths, first taken before you, in the manner most binding on their conscience, and to take such their examinations, and reduce them into writing; and when you shall have so taken them to send the same to the said Zillah Court of closed up and under your seal, together with the said interrogatories, and the commission. Dated at this day of in the year of Our Lord One thousand Eight hundred and

Register.

27th July, 1821.

The Judges of the Court of Sudr Udalut being desirous for the purpose of reference, to be furnished with the futwahs, and law opinions, that have been delivered by the Mahomedan and Hindoo Law Officers of the several Courts of Judicature, in answer to questions of law put to them on the trial of civil cases, direct that you will cause to be made copies and translations in English of all such questions and answers from the commencement of the year 1802 to the end of the past year 1820, and transmit them, when completed, to the Court of Sudr Udalut: and you will, in like manner, annually furnish copies of the Law opinions delivered by your Law Officers on Civil cases in each year.

8th October, 1821.

I am directed by the Judges of the Court of Sudr Udalut to transmit for your information and future guidance the accompanying copy of a letter dated the 13th ultimo, from the Civil Auditor, and to desire that care may be taken to submit the statements of contingent charges in future in the month of July in each year.

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* As the case may be.

† If more than one in the same cause.

To the Register to the Court of Sudr and Fonjdaree Udalut.

SIR,

Having been desired to prepare, annually, for transmission to the Honorable the Court of Directors a book of statements of contingent charges that may have been sanctioned by the Government; to enable me to do so within the period expected, I beg leave to request that the Judges of the several Courts may be desired to transmit their statements of such charges for sanction in the month of July for each year, so that they may reach this Department, after having been sanctioned, within two months at the most after the expiration of every fusly.

I have the honor to be &c.,

(Signed) G. MOORE, *Civil Audt.*

FORT ST. GEORGE,
Civil Audt. Office :
18th September, 1821.

11th February, 1822.

Pursuant to the instructions of the Honorable the Governor in Council, under date the 1st instant, I am directed by the Judges of the Court of Sudr Udalut to transmit for your information, and that of all officers under your authority the accompanying extract of a general letter from the Honorable the Court of Directors, dated the 1st March, 1820.

To the Register to the Court of Sudr Udalut.

SIR,

I am directed by the Honorable the Governor in Council to transmit, for your information and that of all officers under your authority, the accompanying extract of a general letter from the Honorable the Court of Directors under date the 1st of March, 1820.

I have the honor to be, &c.,

(Signed) D. HILL, *Sect. to Govt.*

FORT ST. GEORGE,
1st February, 1822.

Extract from a General letter from England, dated 1st March, 1820.

"We must take this opportunity of impressing upon you, the great importance which we attach to a careful selection of persons qualified by experience, as well as character and talent, to officiate as Judges in the Sudr Udalut. It is not sufficient that they should be thoroughly conversant in the Laws and Regulations, and with the technicalities and forms of judicial business. They should have served long enough in the provinces to have acquired a practical knowledge of Revenue administration also, on account of the intimate connexion that exists between the affairs of the Revenue and Judicial branches of the service, and it is only in the Revenue Department that the practical knowledge to which we allude can be duly attained."

"We are for the same reason extremely desirous, that, as far as the state of your service will admit of it, the selections of persons to fill the offices of Judges in the Provincial and Zillah Courts under your presidency, as well as of Register to the Sudr Dewanny Udalut should also be made from among those who have served a certain time in the office of Collector or Assistant and Collector; a principle which we are further desirous of seeing applied to the situation of Secretary in the Judicial and Revenue Departments, as well as to that of Chief Secretary."

It is also, we need hardly add, highly necessary that the persons appointed to seats at your Board of Revenue shall have officiated in the office of Collector in the interior of the country a sufficient period of time to have enabled them to obtain in that office a thorough knowledge of all the detailed duties of revenue administration, and that the Secretary of the Board should also have served in the Revenue Department in the provinces and come recommended to the situation by his practical qualifications.

(True extracts.)

(Signed) D. HILL,

Secy. to Government.

20th March, 1822.

The Judges have therefore resolved that the *quarterly* abstracts of causes decided and the half yearly reports of causes depending in the Zillah Courts, which are now, under the provisions of Sections X. and XI. Regulation XIII.

of 1802, transmitted directly to the Court of Sudr Udalut, shall be brought in the first instance under the inspection of the Provincial Courts, and you will accordingly direct the several Zillah Judges within your division, to transmit all future reports of these descriptions through your Court.

On the receipt of the *quarterly* abstract or half yearly report of each Zillah, you are desired to examine it with attention, and to call upon the Judge for any explanation which may be wanting under the Regulations in force or the circular orders of the Sudr Udalut. After receiving the required explanations, which should be furnished by the Zillah Judges with as little delay as possible, you will forward them to this office with copies of the orders issued by you on the subject of them, together with the *quarterly* abstract or half yearly report, accompanied by any observations which may appear requisite for the information of the Court and of Government, as well as any suggestions of a general nature, or relative to the state of business in any particular Court, which may be deemed proper with a view to expedite the decision of any arrear of civil causes, or for any purpose connected with the more efficient administration of civil justice.

You will at the same time transmit the prescribed report of causes decided in, or depending before, your own Court, with any explanations which may be necessary, and any observations or propositions which may be suggested by the number of original suits and appeals depending before you, or by any other circumstance.

The judges have lately had under consideration a proposition by the late Judge in the Zillah of Darapooram for abridging the half yearly report of causes depending. He suggests that when a suit has been inserted in one half yearly report, the substance of it and the name of the parties should be omitted from the next and every succeeding report; and that it will be sufficient to specify the number of the suit, and the date on which it was filed, together with the causes of such suits remaining undecided. This suggestion is approved by the Judges; and they direct that the half yearly reports of causes depending both in the Zillah Courts and in the Provincial Courts may be hereafter made out according to the form accompanying this letter.

The Judges also desire that in the *quarterly* abstracts of causes decided, and the half yearly reports of causes depending, regular and summary suits may be entered under distinct heads.

It appears to the Judges to be extremely desirable that the preparation of periodical statements, which necessarily occupies a great deal of the time and attention of the subordinate officers of the several Courts, should be facilitated as much as possible, and the Judges would be glad to receive any suggestions which you may have to offer on this point.

The Judges request that you will transmit a copy of this letter for the information of the several Zillah Judges in your division.

28th October, 1822.

With a view to give full effect to the rules at present in force respecting the custody and management of the Treasuries of the several Courts, to correct trifling inaccuracies and to prevent the accounts from becoming complicated and confused, the Judges of the Sudr Udalut think it necessary to direct that an examination shall be made by the Judge at least once in every three months into the accounts of the Court Treasury. He will then ascertain whether there is any, and what is the amount of, deficiency in the cash chest, and will call upon the treasurer, who is answerable for the same, to make it good. If the Treasurer should dispute the correctness of the principles upon which the accounts have been adjusted, there can be no objection to his referring the matter for the decision of the superior Court.

You will be pleased to issue the necessary instructions upon this subject to the several Courts in your Division.

26th June, 1823.

The Judges of the Court of Sudr and Foujdaree Udalut having received references for instructions in regard to a compliance with applications from individuals for copies of orders and official documents, have directed me to communicate the following instructions on the subject, which are adopted from a circular order of the Court of Sudr Dewanny and Nizamut Udalut in Calcutta.

All persons interested in cases depending before, or decided by, the Civil Courts are entitled to receive authenticated copies of any orders passed in such cases on furnishing the stampt paper required by Section XXII. Regulation XIII. of 1816.

The spirit of the above rule should be observed by the Criminal Courts, when application may be made by parties interested in criminal cases, for copies of orders passed in such cases, unless strong and special grounds of objection shall appear to exist against granting a copy of the order passed in any particular instance; in which case the public officers who may have passed the order is warranted in refusing compliance with the application till the receipt of orders from superior authority.

With respect to applications for copies of proceedings and documents not falling within the rule contained in the second paragraph of this letter, and for the delivery of which no express provision has been made by the Regulations in force, the Provincial Courts of Appeal and Circuit, and the Zillah Judges and Magistrates must be considered to possess a discretion, either to comply with applications for copies, on sufficient cause being stated for granting them on stampt paper, or for allowing them to be taken on any paper in pursuance of Section XXX. Regulation XIII. of 1816, or to refuse compliance when satisfactory cause may not be assigned for granting a copy, or allowing it to be taken, especially when the application may be from a person not a party, or immediately interested, in the case.

25th August, 1823.

The Judges of the Court of Sudr Udalut having had under consideration a representation which has been laid before the Government of the inconvenience and obstruction to the public service, occasioned by revenue servants being called away from their proper duties to give evidence before the Civil Courts, direct that the following instructions may be communicated for the information and guidance of the Zillah Judges and Collectors within your jurisdiction, which the Judges think will be found sufficient to obviate the inconvenience which has been complained of, where a proper understanding may prevail between the Judicial and Revenue Departments.

Whenever the evidence of any native revenue officer above the rank of peon may be required by a party in a suit before a Zillah Court, it will be proper that the Judge should satisfy himself, that the fact to be established by such officer's testimony is material, and that sufficient evidence thereto is not attainable without his appearance.

When these two points may be determined in the affirmative, a communication should be addressed by the Zillah Judge to the Collector, apprizing him of the necessity existing for the attendance of the officer in question, and requesting him to state whether the public service would be impeded by his appearance on the day which the Zillah Court may propose for his examination, and if so to state at what time he could attend without material inconvenience.

An immediate answer should be given by the Collector to this communication and unless special circumstances should require the attendance of the Revenue Officer at a period other than that designated by the Collector, the summons for his attendance should issue in conformity with the Collector's suggestion.

The Judges of the Sudr Udalut direct, that a similar mode of proceeding be adopted in cases when the attendance of such Revenue Officers may be required before the District Moonsiffs, who should be enjoined to communicate the necessary information on such occasions to the Zillah Judge, through whom the summons should eventually issue.

The Judges of the Court of Sudr Udalut deem the present to be a fit opportunity of inculcating the importance of treating all public officers, as well as other persons, on their appearance before the Civil Courts with the attention and respect due to their rank and station in society, and they direct that the Village and District Moonsiffs be particularly enjoined to a due observance of this principle on all occasions.

17*th February*, 1824.

The Judges of the Sudr and Foujdaree Udalut, considering it to be desirable that on all occasions of reference for their opinion regarding the construction of the Regulations they should have the benefit of the sentiments of the Provincial Courts on the question, or questions, so referred, direct me to request, that you will instruct the Zillah Judges and Magistrates within your jurisdiction to make all such references in future, through the Provincial Court, which you will be pleased to forward with as little delay as possible, accompanied by your opinion on the point propounded for the determination of the Judges of the Sudr Udalut.

19th March, 1824.

The Judges of the Court of Sudr Udalut, finding that a difference of opinion prevails in respect to the construction of those provisions of the Regulations, which declare that the District and Village Moonsiffs and Punchayets shall not take cognizance of suits for "personal damages," direct me to inform you that the Sudr Court have ruled, that all suits for damages are excluded from the cognizance of the district and Village Moonsiffs and Punchayets, excepting in cases referred to the former tribunals under Clause first, Section XII. Regulation VI. of 1816.

6th May, 1824.

The Judges of the Court of Sudr Udalut observing that much discrepancy exists in the mode adopted by the Courts in entering the statement of the costs of suits in their decrees; and being of opinion that in many instances expenses are charged against parties to which they are not justly liable, resolve to circulate the following instructions.

Referring particularly to decrees which have been brought before them in appeal from the Northern Provincial Court, the attention of the Judges of that Court is directed to the rules laid down in Section XXVII. Regulation XIV. of 1816, prescribing, that "all sums paid," as well as those "payable on account of costs and expenses, are to be inserted in every decree." Without due attention on the part of the lower Courts to this rule, it is obvious that the necessity of constant reference will be entailed upon the Court of Sudr Udalut.

The Judges are of opinion that all expenses which it is optional with parties in civil suits to incur, and which are not required in order to the effectual prosecution or defence of a suit, do not properly form any portion of the costs adjudicable at the discretion of the Judge, but should be defrayed by the parties respectively subjecting themselves thereto. Of this description are the charges attendant upon the filing of Mooktarnamahs, upon motions for bringing suits to a hearing out of the order of the file, and upon applications for an early decision; when such motions and applications do not rest upon any valid ground; upon motions impugning the testimony of the witnesses of the adverse party, whenever it may appear to the Judge that the charges preferred are without foundation; upon

application for copies of proceedings, not required to be taken out; upon motions presented, under Section IV. Regulation II. of 1811, in which case the costs should be borne by the plaintiff or defendant, accordingly as the motion may be rejected or admitted. The expenses consequent on the furnishing copies of decrees in pauper suits should also be charged to the parties for whom they are prepared.

It has come under the notice of the Judges, that the penalty levied on the admission of exhibits on unstampt paper, under Section XIII. Regulation VIII. of 1808, as revived by Section II. Regulation V. of 1817, has been inserted as an item of the costs of suits and payment adjudged discretionally. This practice is unquestionably erroneous. The penalty, it is evident, from the provisions of Section XX. of Regulation VIII. of 1808, must be considered as a fine for the use of Government, imposed with the view of enforcing the obligations of the stamp Regulations, and it cannot therefore upon any principle be included in the costs of suit, which may be awarded against either party, but must be levied from the party presenting the unstampt document, and transmitted to the Collector to be placed to the account of Government.

It is not the intention of the Judges by the foregoing instructions, to limit, in any degree, the discretion vested in the Courts of Civil Judicature, by Section XXVII. Regulation XIV. of 1816, "to charge the costs of suit," on account of the 'pleadings,' the filing of exhibits, and 'summoning witnesses' "in such" proportions as the Court may deem "equitable." The provisions of Section IX. of the same Regulation, and of Section X. Regulation XV. of 1816, afford, if duly attended to, ample security against the intrusion upon the Courts of unnecessary and superfluous matter in these particulars; and the Judges desire to impress upon the several Courts the necessity of a strict observance of the provisions in question, in order to prevent any needless addition to the expenses of litigation.

It has appeared to the Judges in many respects desirable that one uniform method should be observed by the Courts of Judicature in stating the costs of suit in their decrees, and they direct therefore that the several Provincial and Zillah Courts will insert the costs of suits in the order observed in the annexed form, so far as it may be applicable to the causes respectively decided by them.

The Judges having observed in several instances a disregard of the provisions of Section XXVII. Regulation

III. 1802, which require "the names of the witnesses whose depositions may have been taken, and the title of every exhibit read in the cause to be inserted in the decree, deem it expedient on this occasion to direct a strict adherence in future to the above rules.

Stamp duty on institution, under Section XIII. Regulation XIII. 1816.....
Fees of (plaintiff's or appellant's) pleader, under Section XXV. Regulation XIV. of 1816.....
Fees of defendant's or respondents pleader, under Section XXV. Regulation XIV. of 1816.....
Value of stampt paper filed by (plaintiff) or appellant.....
Value of stampt paper filed by defendant or respondent.....
Stamp duties on (No.) exhibits filed by plaintiff appellant.....
Stamp duties on (No.) exhibits filed by defendant or respondent.....
Expenses for (No.) witnesses of plaintiff or appellant.....
Expenses for (No.) witnesses of the (defendant) or respondent.....
Expenses for serving processes.....
Interest.....
And in appeal cases.....
Costs incurred in the (Lower) Court.....

6th May, 1824.

The practice hitherto observed by the Court, though not recorded in any of its proceedings, has been to consider copies of decrees applied for by *third parties*, as coming within the description of those documents, which the latter part of Clause first, Section XXII. Regulation XIII. of 1816 specifies may be written on paper of the value of 8 annas; and this construction of the rule appears to have been founded upon the distinction which in the Clause above cited seems at first sight to be drawn, between "Judicial proceedings" which "individuals may require for use or reference," and "Decrees" which may be received as evidence in any Court of Judicature.

Upon mature consideration however of the clause in question, the Judges have formed the opinion that it was intended to prevent authenticated copies of the decrees, therein specified, from being obtained by any person, or for any purpose whatever, except upon paper of the value prescribed, and they resolve therefore in this respect to alter the rule of Court which has hitherto obtained.

10*th May*, 1824.

Extract of a letter from the Secretary to Government, in the Judicial Department, dated 4th May, 1824.

"The Governor in Council further thinks it proper to require, that every officer in the Judicial Department, who may quit his situation on leave of absence,. sick certificate or otherwise, shall report through the Sudr Udalut the date of his departure and that of his return."

17*th June*, 1824.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the accompanying extract* of a letter addressed to the Chief Secretary to the Government, dated 10th instant, and to desire that you will communicate the same to the several Zillah Judges within your jurisdiction for their respective information and future guidance.

Extract from a letter to the Chief Secretary to Government, dated 10*th June*, 1824.

I am directed by the Judges of the Sudr Udalut to acknowledge the receipt of a letter (No. 225) from the Secretary to Government in the Judicial Department, dated 21st ultimo, referring for their consideration and report the copy of a letter from the Judge in the Zillah of Chicacole, with copies of its enclosures; and desiring that the Judges will report how far, and under what provisions of the Regulations, Collectors and other public Officers, are compellable to produce the records of their Offices in evidence before the several Courts, and by what means it is competent to such Officers to guard against the hazard or

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* Paras 1, 2, 3, 4, and 8.

injury to the public interests, by which on some occasions the disclosures of public records might be attended, and that they will point out the provisions of the Regulations by which public Officers may be liable to penalties for withholding evidence which the Courts may have called upon them to produce.

In respect to the power of the Civil Courts to compel the production of documentary evidence in general, the Judges direct me to observe, that compulsory process to oblige a third person to produce any writing in his possession, which may be necessary for the trial of a cause, is essential to the constitution of courts of justice: and the Judges are of opinion that the provisions of Section VII. Regulation III. of 1802, are applicable to any cases of omission or refusal to obey a summons, requiring such individual to appear and to bring with him documents in his possession required by the Court.

The general rule of law on this subject holds good, as well as with respect to papers in the custody of a public officer as to papers in the hands of a private person; and the Judges of the Sudr Udalut are of opinion that all risk of injury to the public interests from the exercise of this power by the Courts would be obviated by the observance of the mode of proceeding, which they find to have been sanctioned by the Sudr Court on a motion, made at the instance of the Board of Revenue, under date 12th December, 1820, in the Provincial Court for the Northern Division arising out of an order from that Court, requiring the Collector of Rajahmundry "to furnish an authenticated copy of an extract from the original letter of 15th September, 1810, from the Board of Revenue," to the plaintiff in a suit before the Provincial Court.

Upon this occasion the Board of Revenue questioned the right of the Court "to direct a public officer to furnish copy of any paper to any person, although a party in a suit before them; and proceeded to offer the following observations and suggestions, in the correctness and propriety of which the Judges entirely concur.

"The information of witnesses is for the Court not for the suitors. It is competent to a Court of Justice to call for all the evidence requisite for the due investigation of the cases before them, but the Board apprehend that the correct mode of obtaining the production of papers in the custody of a public Officer, is to summon that Officer to bring, or send by some proper person, the documents required."

"This course," the Board observed, "would produce no public inconvenience, because if the paper required was one of no particular moment, one of the Collector's native establishment would proceed with it and produce it: but if the paper, which a party had requested the Court to call for, was such an one as ought not properly to be produced, or such an one as did not bear on the case, or on any other grounds, should not be put upon the record, the Collector would be able, either in person, or by his Assistant, or native officer, to state his objection to the Court; and the Court, by inspection of the document, if necessary, or on consideration of the Collectors objection, would determine whether the paper in question should be admitted or rejected; and improper disclosures would then be prevented."

"The Zillah Judge would appear to have erroneously considered that the authority of the Court to require the production of documents in the custody of a Collector is limited to the personal suits referred to in Regulation XXVII. of 1802: the power of the Courts to obtain the production of such documents extends, in the opinion of the Judges, to all cases wherein they may be requisite for the determination of the cause; and, as above intimated, the process in such cases must be enforced in the same manner as in the cases of witnesses summoned to attend the Courts."

(A true extract.)

(Signed) W. HUDLESTON, *Register.*

21*st August*, 1824.

The Judges of the Court of Sudr Udalut having reason to believe, that the provisions of Section III. Regulation V. of 1817, as they affect persons, who have not studied at the College of Fort St. George, and to provide for whose qualifying as pleaders in the Courts of Udalut the certificate of qualification according to the form D. appended to that Regulation was framed, are not universally understood, direct me to transmit to you for your information, and that of the several Zillah Judges within your jurisdiction transcripts of Sections XVIII. and XX. title fifth of the rules of the College of Fort St. George, sanctioned by the Governor in Council, and referred to in the preamble of the Regulation V. of 1817, as pointing out distinctly the

mode whereby such individuals may obtain certificates of qualification, namely, by attending at the annual examination held at the College, or by establishing their qualifications at an examination held before the Judges of the Provincial or Zillah Courts assisted by the Law Officers and the Government Vakeel.

Rules of the College of Fort St. George.

TITLE FIFTH.

Section XVIII. Any Moosulman or Hindoo of pure caste who may not have studied at the College, but who may be desirous of obtaining the certificate of qualification to be admitted as a pleader in the Courts of Udalut, shall, on his application for that purpose, be examind at the annual examinations, and if found duly qualified, shall be entitled, equally with the students at the College, to receive the Certificate C, and to have his name entered in the list of candidates for the office of pleader.

Section XX. In addition to the foregoing rules it is provided that the Board of Superintendence, on receiving from any Zillah or Provincial Court, the examination of any Mahomedan or Hindoo of pure caste, desirous of obtaining the certificate of qualification to plead in the Courts of Udalut, shall, if the report be satisfactory, grant to the persons so examined, a certificate of qualification, according to the form D, annexed to Regulation V. of 1817, which shall be forwarded to him through the Court before whom he was examined. Should the report not be considered satisfactory by the Board of Superintendence, they shall be authorized either to refuse to grant the certificate, or to require such further proofs of the competency of the applicant, as may enable them to form a correct judgment of his qualifications; or at their option, to require the attendance of the party at the Presidency, to undergo a further examination at the College.

20th September, 1824.

The Judges direct me to take this opportunity of noticing an order issued by you, under date the 26th May, to the several Judges within your jurisdiction, prohibitory of the practice pursued in the Zillah of Malabar of requiring the personal attendance of all the Moonsiffs annually. The Judges concur with you in opinion that this practice, as a

general one, is inexpedient, but they desire me to enforce the request made known in the communication from this Court of the 19th June, 1822, that "you would refer for their opinion in the first instance all instructions to the subordinate Courts not expressly provided for in the Regulations or by the orders of the Sudr Court."

20th September, 1824.

The preceeding observations on the Abstract Registers from each Zillah will explain the mode in which it is intended that the Provincial Court should examine and revise those reports, previously to transmitting them to the Sudr Udalut; and the Judges direct, that in the transmission of the *quarterly* Abstract Registers, a summary figured statement in the following form* shall be drawn out in the extract of your Courts' proceedings accompanying them.

Referring to former returns, shewing the quantity of business which the Native Officers of Justice are capable of performing, the Court are satisfied that they can with ease decide on their merits at the lowest 20 suits in the month, exclusive of those adjusted by Razeenamah and dismissed for default. The Judges direct, that it be intimated to the Zillah Judges, that where it may hereafter appear by their *quarterly* Abstract Registers, that any one of the Sudr Ameens, or District Moonsiffs, has decided in the month upon their merits less than the above number of suits, satisfactory cause must be shewn for the deficiency. It is expected, that the Zillah Judges will constantly exercise a vigilant superintendence over the conduct of the Officers subordinate to them; and whenever they may discover that admonitions to the Sudr Ameens, and the fines authorized by Clause third, Section VII. Regulation VI. of 1816, to be imposed on District Moonsiffs fail of producing on their part an efficient discharge of the duties committed to them, it will be their duty to make a representation to the proper authorities, for the purpose of effecting their removal on the grounds of neglect or incapacity.

In order that the Sudr Ameens may be enable to fulfil these expectations it is desirable, that the Zillah Judge should always refer to them an ample number of suits, within their cognizance, from the file of the Zillah Court:

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* Form omitted.

and when the reduced state of the file may not permit of such reference, suits may be called up from the files of those District Moonsiff, whose Courts are nearest in distance to the Zillah stations, and whose files may be large, and in arrear.

The Court are prepared to admit, that instances may occur, wherein the above number of suits cannot be regularly decided in the month in some Courts, arising from various reasons, such as illness, the reduced state of the file, temporary absence on leave, or other well grounded excuse; but the Zillah Judge, in the explanatory letter accompanying the Report, should always state what credit is due to those excuses, and check by prompt reproof, or amercement, any attempt at deception.

In the event of any District Moonsiff's file being constantly in a reduced state, it would be desirable to know, whether the circumstance arises from local prejudices against the station, as being unhealthy, &c., or whether the Moonsiff's capacity or integrity are questionable; in short, whether any ascertainable cause exists susceptible of a remedy.

On examining some of the Reports from the Zillah and the District Monsiff's Courts, the Judges have remarked, that frequently suits of more recent date have been disposed of, prior to those of a long standing on the file. This departure from the provisions of Section XX. Regulation III. of 1802, and Section XXV. Regulation VI. of 1816, requires an immediate check, and it is the duty of the Provincial Court to enforce attention to those rules by every means in their power: the Judges direct, that when instances occur of deviation from the regular order of the file, on the part of a District Moonsiff, a short abstract at the foot of his register be inserted, explaining the motives for the deviation.

The Abstract Registers that are *quarterly* transmitted exhibit several variations from each other, and in some cases do not convey that information which the Court of Sudr Udalut desire. In order that uniformity may be preserved, the accompanying forms* are transmitted to be circulated for the guidance of the Zillah Judges subordinate to your Court. These forms contain in themselves sufficient information upon the several particulars to which they refer; and the only observations that appear necessary to

* Forms omitted.

be added, refer to the use of the terms "nonsuit" and "dismissal," when employed in describing the mode in which suits may be disposed of; and the Judges desire, that in the numerical statements when reference is made to a cause, in which judgment has gone in favor of the plaintiff, the words, "decreed to plaintiff" may be used; and when against him, "dismissed." The term nonsuit, it is desirable, should be omitted altogether, as being in general inapplicable; and when suits are "dismissed for default," those words may be expressed; which will distinguish them from suits dismissed after investigation under a decree.

In the 6th and 8th paras of my predecessor's letter to you, dated 20th March, 1822, the reasons that induced the Court of Sudr Udalut to direct, that the periodical reports prescribed by Regulation XIII. of 1802, should be brought, in the first instance, under the inspection of the Provincial Court, and the nature of the examination and revision, which the Judges of those Courts were expected to exercise, were distinctly explained: and without more particularly animadverting on the past, the Judges desire me to refer you to that letter, and to state, that your superintendence is required to be of a more active and careful description than it has hitherto been.

In addition to the copies of the orders you may convey to the Zillah Judges on their Abstract Registers, and of the explanations furnished by those Officers, which you are by the 8th para of the letter, above alluded to, instructed to forward to this office, the Judges direct, that copies of the letters of the Zillah Judges accompanying their Abstract Registers be in future always forwarded with them.

In the letter of the Zillah Judges transmitting their Abstract Registers, the Judges expect that they will always offer such explanations as are obviously necessary, and direct that they invariably insert therein a figured statement in the following form.*

You will be pleased to communicate to the several Zillah Judges within your jurisdiction such parts of this letter as concern them respectively, furnishing them with copies of the forms herewith transmitted for their observance in future.

18th October, 1824.

The Judges of the Sudr Udalut, adverting to the incon-

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* Form omitted.

veniences which have resulted in certain instances lately brought under their consideration, wherein a judicial Officer had given judgment in Court prior to the preparation of the decree, Resolve, in order to provide against the recurrence of similar evils, to circulate the following instructions. No judgment is to be declared in a Provincial or Zillah Court till the draft of the decree in the suit is ready for transcription. All such drafts must be in the hand writing and bear the signature of the Judges or Judge passing the decree. And with a view to prevent a knowledge of the intended judgment being made public before the formal declaration of it in Court, neither translations, nor copies of the decrees, are to be made until judgment has been pronounced.

30th October, 1824.

Under instructions from Government the Judges direct me to explain to you, that it will be necessary in submitting your future annual statement of contingent charges, invariably to insert in the column headed "charges incurred in the preceding Fuslee," every charge incurred: Although there may be no corresponding item in the accounts of the Fuslee requiring sanction, such items of the previous fuslee should be entered at the foot of the column. The totals of the charges of both fuslees must be inserted, and the net increase or decrease in the actual expenditure will then be exhibited.

29th November, 1824.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the annexed forms* A B C and D of Abstract Statements, which the Judges desire may always accompany your letter, when submitting the half yearly reports. These statements are intended to bring under review the actual state of the files in all the Courts of Judicature in your division; and to exhibit a comparison of the progress made in the adjustment of claims before them. The column No. 9 in the form A, you will observe, shews the number of suits to be disposed of, the total of the

* Forms omitted.

columns 12 and 15 the number actually disposed of, and the balance still pending.

Should there be upon a comparison any difference between the total of these columns, and the number entered in No. 9, the Zillah Judge should be required to afford the necessary explanation.

The Judges desire that you will transmit without delay, the forms marked from Nos. 1 to 29 inclusive to the several Zillah Courts under your jurisdiction. In these statements all suits of a similar description are to be exhibited together, first those exceeding 200 rupees in value in the statement at length, and then the suits under that amount in the numerical statement. The forms Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 26, and 28 will give the former, and Nos. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, the latter. All appeal causes, whether regular or special, are to be included under the general head of 'Appeals;" but suits instituted under Section XVI. Regulation V. 1822, must be comprised in the number of original causes, as they are in fact regular suits which have not been previously judicially tried and determined.

11th December, 1824.

The Judges of the Sudr and Foujdaree Udalut by a circular order, dated 17th February last, directed that the Zillah Judges and Magistrates should be instructed in future to make all references, upon questions regarding the construction of the Regulations, through the Provincial Court; the practice having previously obtained of making such references directly to the Judges of the Sudr and Foujdaree Udalut.

Since the circulation of the above order, the Judges have noticed three cases, in which, upon the reference made to the Provincial Court, that Court have disposed of the question: and on one of the occasions here referred to, the decision, so passed by the Provincial Court, was ultimately over ruled.

The Judges deem it proper, therefore, to explain that it is their intention, that all references from the subordinate Officers regarding the construction of the Regulations should be laid before them for determination, accompanied by the sentiments of the Judges of the Provincial Court, by whom no determination on the point should be recorded, or

communicated to the subordinate Officer, excepting in the cases described in Section II. Regulation XXII. of 1802.

27th January, 1825.

The Judges of the Sudr Udalut, observing that a diversity of practice obtains in the mode of preparing the abstract statement which the Zillah Judges are required, by their orders of the 20th September last, to annex to the letters accompanying the *quarterly* abstract Registers, direct me to notify to you for the information and guidance of the Zillah Judges under your jurisdiction, that under the head of causes "disposed of" by the Judge, are intended to be included all suits, referred to the subordinate Courts during the *quarter*, for which the Register is furnished; and that the column of suits, filed before the Register and Sudr Ameens, is intended to exhibit the whole number of references within the *quarter*.

All the causes instituted should be included in the number of those "filed" in the Judge's Court; and not merely the balance after deducting suits referred.

In the abstract here referred to the number of suits called up by the Zillah Judge under the provisions of Section LIV. Regulation VI. of 1816, should be included under the head of causes "disposed of" by the District Moonsiffs.

The Judges direct, that in the statement No. 25, which accompanied the foregoing letter, may be inserted another column headed, "called up by the Zillah Court under Section LIV. Regulation VI. of 1816;" that, in addition to the particulars now given in the "Abstract of Appeals and causes disposed of" by the Judge, viz., of the numbers "decreed or dismissed" and "adjusted by Razeenamah," a third entry be made of suits "referred to the subordinate Courts;" and that in the corresponding statement of suits disposed of by District Moonsiffs an entry be in like manner made of suits "called up by the Zillah Courts."

12th March, 1825.

The instructions of the Judges of the Court of Sudr Udalut in relation to the statements prepared in conformity to their orders of the 20th September last, having been in various instances misunderstood; and it appearing de-

sirable to adopt some alterations suggested by the Provincial Court for the Centre Division in the form of the abstract Registers, the Judges have resolved to circulate the following orders in modification of their former instructions.

The Judges direct, that the numerical statement, entered in the letter from the Provincial Courts, shall commence with an account of the business performed in their own Courts, and with the view of distinguishing the extent of the labours of the District and Village Judicatories, the accompanying form A,* is forwarded for the future guidance of the Provincial Courts. This form will be submitted in their letter accompanying the *quarterly* Abstract Registers.

In the form No. 2. furnished to the Zillah Courts, under date the 20th September, the copyist having omitted to insert the terms "special appeals," which it was intended should have been comprized in this statement, the Judges direct that the several Zillah Courts be instructed to rectify this error.

It has been observed that the terms used in the numerical abstracts, do not sufficiently define the mode in which the suits have been disposed of: The Judges desire, therefore, that the following terms be uniformly employed in future. In cases where the claim has been wholly allowed or disallowed, the terms "in favour of the plaintiff," "in favour of defendant," are to be used, when a part only of the claim has been allowed the entry should accordingly be "partly in favour of the plaintiff." When suits are withdrawn, the same term is to be employed; when Razeenamahs have been filed, such suits should be designated by the term, adjusted by Razeenamah, and when suits are dismissed for default, the entry should be made in these words.

Whenever suits may be referred by the Judge to the subordinate judicatories, or called up from them, the number of such suits need not be entered in the Abstract Registers, but are to appear in the column headed, 'transferred suits' in the form B,* which accompanies this communication.

In lieu of the present explanatory abstracts inserted at the foot of the several statements from No. 1 to 29 inclusive, Nos. 1, 2, 3, in the form B are henceforth to be observed. These forms will afford the information, which the Judges of the Provincial Court for the Centre Division

* Form omitted.

have considered necessary; and will distinguish the suits decided on trial from those dismissed for default. The Judges do not deem it advisable to continue this distinction, to the final "abstract of the number of causes disposed of" which at present corresponds with the form prescribed in Section XXIII. Regulation XIII. 1802. The Judges also desire that a note be appended to the foot of the Register from each Sudr Ameen and District Moonsiff, stating the number of appeals lodged within the *quarter* from the decisions of each of those Courts. It is not intended that this notice should be confined to appeals from decisions upon the causes enumerated in the Register of the *quarter*; but is to include every appeal admitted within the *quarter* whether relating to decrees passed prior to or during the same *quarter*.

With a view to facilitate the preparation of the general returns in this office, it is desirable that the Zillah Judges should invariably observe the same order of succession in entering the Registers of the several District Moonsiffs.

In conclusion, the Judges desire me to express their hope, that the foregoing instructions, together with those circulated, under date the 27th January, may be carefully observed. The attention of the several Zillah Judges should be particularly called to the subject, when the present orders are furnished to them. The correct preparation of these returns is an object of importance. and if the requisite care is exercised, in the first instance, the necessity of much future reference will be obviated.

4th April, 1825.

The Judges of the Court of Sudr Udalut have found it necessary at different times, to issue instructions to the Zillah Judges, to enforce the observance of the provisions of Section XXV. Regulation VI. of 1816; which require, that all suits before the Court of a District Moonsiff, shall be heard, 'in the order in which they have been filed or numbered.'—The Judges, observing, however, that these provisions continue to be infringed, resolve to circulate the following orders.

Section XXV. Regulation VI. 1816, clearly prescribes, that no suit shall be tried or determined by a District Moonsiff, out of the order of the file, excepting under the directions of the Zillah Court; and it is not competent to a Moonsiff of his own authority, "to bring any particular

suit or suits to a hearing without attending to the regular order of the file."

The Judges direct that the several Zillah Judges do issue circular instructions to the District Moonsiffs enjoining a strict observance of these provisions: pointing out to them their incompetency to try any cause out of the regular order of the file, without the previous sanction of the Zillah Judge. The Judges of the Sudr Udalut expect that the several Zillah Judges will notice, in future, every instance in which a Moonsiff may depart from their instructions; and repress their neglect by fine, and, if necessary, report their misconduct to the Provincial Court.

The foregoing order does not, of course, apply to suits disposed of without investigation: the terms of the enactment above cited restricting the operation of the rule, to suits brought to a hearing.

11th April, 1825.

To the Judges of the Provincial Court of Appeal, in the Northern, Southern, and Western Divisions.

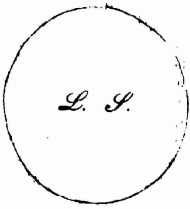
The Judges of the Court of Sudr Udalut direct me to transmit for your information and guidance, the accompanying extract, from the proceedings of the Court of Sudr Udalut, dated 2d October, 1804, which appears to have been communicated only to the Zillah Judges.

I have the honor to be &c.,

(Signed) W. HUDLESTON, *Register.*

"The Deputy Register lays before the Court, a form of a warrant in the nature of a *capias ad satis-faciendum*, drawn up by the Honorable Company's Solicitor, and approved by the Advocate General.

The Zillah of Chingleput Court.



To *(The name of the Person who is to execute the warrant.) greeting*

I Judge of the Zillah Court of Chingleput, command you that you take *(the defendant)* now, or late, of *(his place of residence)* and keep him safely, so that you may have his body before me in the said Court on the day of next to satisfy *(the complainant)* the sum of *(the money recovered in the Zillah Court,)* which the said *(complainant)* lately in the said Court recovered against the said *(defendant)* as appears by the records of the said Court.

Given under my hand and seal of Office this day of in the year of Our Lord One thousand Eight hundred and

(Signed) J. S. *Judge.*

[redacted]

Extract of a Letter addressed to the Secretary to Government in the Judicial Department, dated 30th May, 1825.

In the 21st paragraph of their proceedings the Provincial Court take occasion to observe, that "some oversight appears to have occurred during the preparation of Regulation III. of 1822, by its omitting all mention of Section IV., whilst Sections V., VI., and X. of Regulation VII., 1818, are specially quoted therein:" which, as they observe, "might lead to the belief that, in regular appeals not originally *formâ pauperis*, in which the cause of action originally may not exceed 80 rupees,or may be a claim for damages on account of slander, assault, or personal injury, or for the recovery of pecuniary penalties incurred by any breach of the Regulations, the party against whom the decree may be given can appeal in *formâ pauperis* from the judgments passed, although parties originally paupers are not admitted as plaintiffs to sue under Regulation VII. of 1818 in any such cases."

It appears to the Judges of the Court of Sudr Udalut, that, on the general principle of construing one part of the law by another, it might safely be ruled, that the provisions of Regulation III. of 1822, do not extend to the cases described in Clause first, Section IV. Regulation VII. of 1818: it may, however, be expedient to introduce a declaratory provision to this effect into any Regulation, which may be enacted in modification of that last mentioned.

In the 22d paragraph of the proceedings of the Provincial Court, it is stated that discussions have arisen regarding the true intent and meaning of the declaration in the

form A, appended to Regulation VII. of 1818, it being contended, that the words "contained in the foregoing declaration," belong to the first declaration, that is, the one mentioned in Clause second, Section V., whereas those words had formerly been deemed to refer only to the truth of the annexed schedule, and not to the truth of all the allegations, contained in the preceding declaration.

The terms in which the declaration in the form A appended to Regulation VII. of 1818 is drawn, admit of the construction, which has been put upon them by the Provincial Court, namely, that they have reference to the declaration, mentioned in Clause second, Section V. of the Regulation. That construction appears, however, to the Judges of the Court of Sudr Udalut to be manifestly erroneous, there being nothing in the contents of the declaration last mentioned, to which the affidavit of the party could answer any conceivable purpose. The Judges are of opinion, that the affidavit in the form A refers exclusively to a statement to accompany the schedule of property, described in Clause fourth, Section V. of the Regulation, setting forth the situation of such property, and describing the circumstances, and the period, of any alienation of property previously in the possession of the party. Such has been the construction, acted upon by the Judges, on the qualification of a pauper appellant in the Court of Sudr Udalut.

1*st July*, 1825.

The Judges of the Court of Sudr Udalut, seeing reason to believe that their instructions under date 20th September last, respecting the transfer of suits from the files of the District Moonsiffs for trial by the Sudr Ameens, have not been correctly interpreted by the Zillah Judges, deem it proper to transmit to you the accompanying extract* of a letter, dated 20th ultimo, to the Judges of the Provincial Court of Appeal in the Centre Division, noticing an instance in which those instructions had been acted upon in a manner wholly inconsistent with their intention.

The Judges desire that you will communicate the extract in question to the Zillah Judges within your jurisdiction for their information and future guidance.

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* Paras 6, 7, 8, 9 and 10.

Extract of a letter addressed to the Judges of the Provincial Court in the Centre Division, dated 20th June, 1825.

The Judges of the Sudr Udalut observe that the Acting Judge in the Zillah of Cuddapah called up 411 suits from the file of the District Moonsiff of Cuddapah. This proceeding the Judges conclude to have been founded upon the instructions given in the 24th paragraph of my letter, dated 20th September last.

The acting Judge must have greatly misunderstood the intention of those instructions in transferring such an enormous number of suits at once from the file of the District Moonsiff to that of the Zillah Court. It was merely intended, that on occasions whereon it might appear that the files of the District Moonsiffs were overloaded and falling into arrear, and the state of the file of the Zillah Court might not admit of the reference of a sufficient number of suits to the Sudr Ameens, such a number, as might be requisite to give immediate employment to the latter Officers, should be called up from the files of the District Moonsiffs, whose Courts might be the most contiguous to the Zillah station.

The power vested in the Zillah Judges by Section LIV. Regulation VI. of 1816, is highly valuable and necessary in order to the exercise of efficient controul over the proceedings of District Moonsiffs: but the Judges of the Sudr Udalut are of opinion, that the greatest caution and discretion ought to be observed in the exercise of it. It is obvious, that parties in suits thus called up are subjected to expenses, on which they never could have calculated, and which if they had forseen they perhaps might have refrained altogether from litigation. From local and particular circumstances it is possible, that they may have sought the decision of a District Moonsiff, when they would not have had recourse to that of any other authority, before whom if they are reluctantly brought, they are exposed to inconveniences to which knowingly they might not have rendered themselves liable.

The Judges think therefore that a paucity of business before a Sudr Ameen is barely sufficient cause for calling up suits from the District Moonsifs, if there is the prospect of their being decided in a reasonable time where they were originally filed, and when, this not being the case, it is advisable so to call up suits, the Judges of the Sudr Udalut direct, that they may invariably be those for the highest amount that have not been proceeded in.

You will be pleased to communicate the observations contained in the 6th, 7th, 8th, and 9th paragraphs of this letter to the Zillah Judges within your jurisdiction and be careful to notice any instance, in which a Zillah Judge may appear to have exercised the authority given by Section LIV. Regulation VI. of 1816, without due discrimination, or called up at any time a greater number of suits than appeared necessary for the relief of the file of the District Moonsiff, or the provision of immediate employment for the Sudr Ameens.

21st October, 1825.

The Court of Sudr Udalut have, of late, received several communications, upon matters pending before them, through the channel of the public post, which they are precluded by the Regulations from taking cognizance of, and having ground to suppose that the parties forwarding these representations are not sufficiently aware of the inutility of the measure they have adopted, they desire that a public notice may be affixed in the Provincial and Zillah Courts, declarative of the irregularity of the proceeding adverted to; and pointing out to the inhabitants, that all representations to the Court of Sudr Udalut, can only receive consideration, when made in accordance with the rules laid down in Section VI. Regulation V. of 1802.

The substance of these rules, should be inserted in the notice now directed to be published.

9th December, 1825.

An instance having lately come under the notice of the Judges of the Court of Sudr Udalut, from which it appears, that the provisions of Clause second, Section XV. Regulation XV. of 1816, have not been construed as making it obligatory on the Register of a Zillah Court to write his decrees in English: and the Judges being clearly of opinion that such is the intention of the law, they desire to be informed, whether, it has been the uniform practice in the Zillah Courts within your jurisdiction for the Registers to record their decrees in the English language.

9th February, 1826.

Instances having come under the observation of the Court of Sudr Udalut in which considerable intervals have

elapsed between the date of passing a decree and that of reading it in Court and filing it of record;—I am commanded by the Judges to signify their opinion, that this distinction between passing a decree and reading it in Court and filing it of record is incompatible with the Regulations, and liable to produce mischievous effects. No decree can be considered as passed till it is read or declared in open Court, and on the date of its being passed it is virtually filed of record.

With reference to the Court's circular orders, 18th October, 1824, the Judges are of opinion that the only proper course is to declare judgment in open Court by reading a short abstract of the decree in the native language, which can be prepared in a few minutes by a competent translator, and for which purpose the draft of the decree need not be seen by him till immediately before the Court opens.

10*th August*, 1826.

Extract of a letter from the Secretary to Government in the Judicial Department, dated 8th August, 1826.

The Governor in Council has been pleased to resolve, that when the Register of a Zillah, or Provincial, Court deposits money with a Collector, under the rules established on the 9th of February, 1819, the Collector shall give a receipt for the specific sum deposited, and be responsible for the amount; and that the practice of receiving and returning under seal deposits lodged with Collectors by judicial officers shall be confined to deposits not consisting of money.

21*st September*, 1826.

The Court have been led to consider the general question as to the amount of security proper to be taken from the party placed, or left, in possession of landed property under an appeal to the King in Council.

On occasion of the first appeal of this description being admitted in No. 18 of 1814, this Court directed in their Proceedings, 24th September, 1818, that the security to be taken from the party in possession should be fixed with reference to the general rules in this respect declared in the Regulations which make it one year's produce, if the land be Malguzary, ten years produce if Lackhiraj. On one

occasion since, the same amount of security has been approved by the Court; in all the other cases which have occurred, the Courts below were charged to take good and sufficient security; but the amount was not specified nor reported.

All that this Court is bound to do is to take good and sufficient security for the due performance of the decree of the King in Council. This will be sufficiently provided for if security is taken for all net receipts from the lands—because, to whichever party the property may be finally adjudged, the revenue due to Government, which constitutes the difference between the net and annual produce under the Regulations, must have been intermediately paid and never constituted an accountable receipt to the party in possession. As long as that party gives security for all that he receives, so long will there be the means of duly performing the decree of the King in Council, because any private transfer of the land itself during the appeal is invalid, under Section XIV. Regulation IV. of 1802, which, though applicable to appeals to the Governor General in Council, and as such rescinded and not re-enacted with respect to appeals to the King in Council, the Court have no doubt applies to the latter, and the land itself and the receipts from the land are the whole property.

The Court are not called upon to discuss the necessity of taking security in the amount of the whole annual produce in cases of appeals determinable finally in this country, and in such cases the Regulations leave no discretion. The Court are of opinion that the lowest sufficient security is all that need be taken in any case; but in appeals to the King in Council the indefinite distance of the decision is a peculiar circumstance which renders it expedient to give every possible facility to the execution of the decree appealed from: otherwise the right of making such an appeal is convertible into an instrument of serious oppression, by keeping the winning party out of a right which has been adjudged to him by the highest tribunal in this country, and to which his title must therefore be presumed well founded. This principle was distinctly recognized in the proceedings of this Court on the first case, but at that time the Court had not had experience how great the distance of the decision really was. With the experience of 8 years, during which many such appeals have been preferred and not one decided; and with the information of late officially communicated from Bengal, the present Court consider that in modifying the rule declared

by a former Court they are only doing that, which the Court that passed the rule would have done if they had foreseen what is now known respecting the real nature of these appeals.

The Court accordingly resolve, that the security to be taken, in the first instance, from a party in whose favor a decree of this Court for landed property shall be executed pending an Appeal to the King in Council, shall be for a sum equal to the difference between the annual produce thereof, as defined by Section III. Regulation III. of 1802, and the yearly revenue payable to Government; further security for an amount, to be similarly calculated, continuing to be demanded at the beginning of every successive year, so long as the Appeal to the King in Council shall be depending; and, in failure of the security demanded being given, the landed property to be placed under attachment, or in possession of the opposite party, as the case may be.*

18*th December*, 1826.

I am directed by the Court of Sudr Udalut to desire that all records of appeals and other packets sent from your Court to the Court of Sudr Udalut by Banghy may in future be invariably covered with wax-cloth over the paper envelope, the joinings of the wax-cloth to be sewed and sealed.

28*th February*, 1827.

In the opinion of the Judges all suits against Collectors, of however small amount, should be decided by the Zillah Judges themselves: not, however, because the Judges alone are mentioned in Regulation I. of 1823; that mode of expression being evidently used merely with reference to the Judge, as distinct from any subordinate Officer of his Court, being the person who alone admits and arranges the disposal of all suits preferred in his Court: but, because it is inconsistent with propriety and with the principles and usages of the service that the acts of a superior officer should be decided on by an inferior one—as would be the case if the suits in question were referred to the Register.

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* See proceedings 14th April, 1834.

1st March, 1827.

I am directed by the Court of Sudr Udalut to transmit to you the accompanying copy of a letter dated the 23d ultimo, from the Secretary to Government in the Judicial Department to be communicated to all the Judges and Assistant Judges within your Division for their information and guidance.

Fort St. George, 23*d February*, 1827.

Complaints having been made to Government, that Zemindars and other individuals of rank and respectability are frequently required to give evidence in trivial and unimportant matters before the Courts, and are subject to great annoyance, and, in their opinion, degradation thereby; I am directed to request that the Sudr and Foujdaree Udalut will take a suitable opportunity to explain to the Courts in the Provinces that it is the wish of Government that they should avoid summoning persons of this description as much as possible, and that, when their attendance in Court is indispensable, they may be treated with the consideration and attention which is due to their rank and situation in life.

I have the honor to be &c.,

(Signed) H. CHAMIER,

Sect. to Govt.

26*th March*, 1827.

With reference to Regulations I. and II. of 1827 just promulgated, and with the sanction of the Governor in Council I am directed by the Courts of Sudr and Foujdaree Udalut to furnish you with the following instructions to be communicated for the guidance of all Zillah and Assistant Judges within your Division who are now, or hereafter shall be affected, by them.

The Ministerial establishments for the Auxiliary Courts, provided for in Section IV. Regulation I. of 1827, are to be selected by the Zillah Judges, on the formation of those Courts, first from among such of the native servants of the abolished Courts as may still be unemployed or in lower situations than they held there; next from among their own Court servants, on the principle of promoting such as are most able and deserving: subsequent appointments and dis-

missals in the Auxiliary Courts to be made by the Assistant Judges at the heads of those Courts.

Assistant Judges, appointed under Regulation I. of 1827, being to exercise, under Clause first, Section V. the full power and authority of Zillah Judges, within their local jurisdictions, the Zillah Judge, on the establishment of an Auxiliary Court, is to send orders to all the District Moonsiffs whose local jurisdictions are included within that of the Auxiliary Court from the date on which the Assistant Judge shall commence the exercise of his functions to transmit to him, instead of to the Zillah Judge, the reports specified in Clauses first and second, Section XLI. Regulation VI. of 1816, and the fines mentioned in Section LI. of the same Regulation. Similar orders to be sent whenever any subsequent alterations by order of Government of the local limits of any Assistant Judge's jurisdiction may render them necessary.—It will also be the duty of the Assistant Judge to recommend to the Provincial Court persons to fill any vacancies in the office of District Moonsiff within their jurisdictions.

In the transfer of suits to the Assistant Judge under Clause first, Section VI. Regulation I. of 1827, the Zillah Judge will observe the following rules.

If the petition of Plaint only has been filed, he will transfer the suit in its present state.

If any further pleadings have been filed, beyond the petition of Plaint, he will retain the suit in his own Court, till the Pleadings have been completed and then transfer it.

If the pleadings and exhibits have been filed, and any of the witnesses have been summoned or examined, he will not transfer the suit, but decide it himself.

The same rules are to be observed in referring suits to the Assistant Judge, under Clause second, Section VI.

Sudr Ameens on the first establishment of the Auxiliary Courts are to be selected by the Zillah Judge from among the most deserving of the District Moonsiffs.

On the establishment of an Auxiliary Court the Zillah Judge will transmit to the Assistant Judge an authenticated copy of all circular orders received from the Provincial Court or Sudr or Foujdaree Udalut, which his records contain: also one copy of the Regulations and of any other books which may have been furnished by Government for the use of his Court and of which he has duplicates.

All the same reports and statements as are submitted by Zillah Judges and Criminal Judges to the Provincial Courts

and Sudr and Foujdaree Udalut to be transmitted by the Assistant Judges to those Courts direct.

All circular orders or other instructions sent from the Sudr and Foujdaree Udalut to the Provincial Court to be communicated to the inferior Courts within the division, to be communicated direct to the Auxiliary Courts; and all other communications generally to be made direct from the Provincial to the Auxiliary Court.

During the temporary absence from his station of an Assistant Judge from sickness or other cause, if no special arrangement shall have been made by Government, the Judge of the Zillah Court will depute his Register to take charge of the Auxiliary Court, or, in the absence of his Register, will call upon the Judge of the nearest Zillah to depute his Register for that purpose. The officer thus deputed will not be competent to exercise any judicial functions unless specially commissioned by Government, and his duty will be confined to the superintendence of the office and to the discharge of such of the functions of the Assistant Judge as are purely ministerial.

10th April, 1827.

I am directed by the Court of Sudr Udalut to transmit to you for the information and guidance of the several Zillah and Auxiliary Courts within your jurisdiction the accompanying copy of a correspondence with Government respecting the course proper to be observed by those Courts in case of application being made to them to act in execution of a decree of the Supreme Court of judicature respecting property situate within their local jurisdictions.

No. 13.

To the Acting Secretary to Government in the Judicial Department.

SIR,

I am directed by the Judges of the Court of Sudr Udalut to transmit to you for the purpose of being laid before the Honourable the Governor in Council, the accompanying copy of a letter dated the 25th instant, with its enclosures from the Judge in the Zillah of Chingleput, requesting instructions on the subject of a requisition made to him by the late Sheriff of Madras.

It appears that two villages called Noombul and Paliampet, situated in the Zillah of Cingleput, have been sold under a Writ of execution issuing from the Supreme Court of judicature at Madras; and the Zillah Judge is called upon to give the usual notice of such sale to the tenants, and to deliver possession to the purchaser.

The Judges apprehend that that the Zillah Judge is under no legal obligation to comply with the Sheriff's requisition in this matter; but they beg leave to suggest that the question may be referred for the opinion of the Advocate General.

If the officers of Government in the Provinces are bound as such to act ministerially in the execution of this or of any other process issuing from the Supreme Court, it appears to the Judges to be extremely desirable that rules should be framed for their guidance and published in a legislative enactment.

(Signed) G. J. CASAMAJOR, *Register.*

29th January, 1827.

No. 89.

Fort St. George, 9th March, 1827.

I am directed to acknowledge the receipt of your Register's letter of the 29th January last, No. 13, and to transmit for your information and for the guidance of the Zillah Courts, the accompanying copy of one which was in consequence addressed to the Advocate General and of the reply to it, respecting sales by the Sheriff of Madras of lands situated beyond the limits of the jurisdiction of the Supreme Court, and the process by which the purchasers may obtain possession thereof.

I have honor to be &c.,

(Signed) HENRY CHAMIER,

Secretary to Government.

To the Judges of the Sudr Udalut.

To the Advocate General.

SIR,

I am directed by the Honourable the Governor in Council to transmit to you the accompanying copy of a letter from the Sudr Udalut, with its original enclosure and to request that you will state your opinion, whether in such

matters as are therein noticed the Zillah Judge or any other officer of the Government beyond the limits of the jurisdiction of the Supreme Court is legally bound to comply with requisitions from the Sheriff and to act ministerially in the execution of process issuing from the Supreme Court.

As the Regulations prescribe that certain forms shall be observed in order to render sales of land, whether in execution of decrees of Court or for arrears of revenue, valid, you are requested to state whether such forms are not binding on officers of the Supreme Court as well as on the local Officers of the Government when in the execution of similar duties.

I have the honour to be, &c.,

(Signed) HENRY CHAMIER,

Secretary to Government.

6th February, 1827.

To the Chief Secretary to Government.

SIR,

I have the honour to acknowledge the receipt of a letter from Mr. Acting Secretary Chamier dated the 6th ultimo, transmitting a communication from the Sudr Udalut, with its original enclosure, and requesting my opinion, "whether in such matters as are therein noticed, the Zillah Judge, or any other Officer of the Government, beyond the limits of the jurisdiction of the Supreme Court is legally bound to comply with requisitions from the Sheriff and to act ministerially in the execution of process of the Supreme Court."

I am of opinion that possible cases may arise, in which, a Sheriff may be justified, in requiring the aid of a Zillah Judge, in executing the process of the Supreme Court: but, that in the case, which has produced the present correspondence, the Sheriff had no authority to make any requisition to the Zillah Judge at Chingleput, respecting the villages which had been sold under the process of the Supreme Court, or delivering the possession thereof.

A practice has prevailed at Madras, whereby the Sheriff after selling property, seized in execution, has usually delivered possession of it to the purchaser, and this so far as regards goods and *moveable* property, is consonant to the practice in England; but as Houses and Land are here, under the charter, subjected to the usual process of the

Court. The Sheriff has also, in many instances, delivered possession, to the purchasers exercising in this respect, as I consider an excess of authority; and therefore, I presume, he considered himself justified in addressing the requisition to the Judge of Chingleput.

It appears to me, that when the Sheriff has sold the right, title, and interest in *immoveable* property, of any Defendant, against whom a *fieri facias* has issued, and has executed a conveyance to the purchaser, the functions of the Sheriff have been expended; and that the purchaser must then adopt, in the Supreme Court, the same course that is prescribed in England, by an action of ejectment, this, of course, can only apply to Houses or Lands *within* the limits of Madras.

By the operation of the process executed by the Sheriff, the right, title, and interest of the defendant in the property sold and conveyed, is transferred to the Purchaser, and he commences an action of ejectment against the Tenants or other person in possession; and serves them with process, which enables them to appear and defend their possession, and, should the party, who had been defendant in the former action, think fit to defend against the purchaser, it is permitted. But on proof that such defendant *was* the proprietor of the property, at the time when it was seized in execution: and on proving the Judgment obtained against him, the process, the seizure, and the sale, and conveyance, the purchaser obtains a verdict in his favor, upon which, a Judgment is entered up, and *then*, but not until then a process called a "Writ of Possession" issues to the Sheriff, authorizing him to deliver possession of the property so recovered by the ejectment, to the successful party, the purchaser under the former process.

It will be *readily* perceived, that no action of ejectment can be brought in the Supreme Court, to recover lands, situated *beyond* the limits of Madras: and that therefore a purchaser of such lands, can derive no benefit from his purchase, unless he can resort to some other Jurisdiction, to obtain the possession of the property purchased.

The *right* of the Supreme Court to sell landed property, beyond the limits of Madras, belonging to persons subject to its Jurisdiction, has never, I believe, been *successfully* questioned; although many doubts have been entertained on the subject, here and in Calcutta: and I am not prepared to support an opinion, that such a right does *not* arise out of the Charter, giving to it a reasonable construction.

If the Supreme Court *has* the power to sell immoveable property, situated beyond the limits of Madras, belonging to persons, who are clearly subject to its jurisdiction, and, if the same, *be sold*, the purchaser must have a remedy in some jurisdiction, if the property sold be not delivered to his possession.

For the reasons already stated, I am of opinion that *no* such remedy can be found in the Supreme Court, where the immoveable property, is not within the limits of Madras, and therefore, such a purchaser, must I think, resort to the judicial authority exercised in the Zillah or District, in which the property sold is situated.

I am wholly uninformed of the practice that prevails in the Zillah Courts, respecting, enforcing the judgments of other Courts, and it is very possible that my ignorance of the actual proceedings, might render it difficult for me to construe or understand the Regulations that apply to this subject. But I take it for granted, that a person who has recovered a judgment in one Zillah, may, with it in his hand, follow a defendant into any other Zillah, and there enforce it against person or property. If so, the proceedings which provide for such a case, will, I conceive, afford an analogy, for some competent proceedings in a Zillah Court, to enforce or carry into effect, a judgment, or execution of the Supreme Court.

If the plaintiffs in the two actions mentioned in the letter from the Sheriff to the Judge of Chingleput, had not sued out process of execution at Madras, but had commenced proceedings in the Zillah Court of Chingleput, on the judgments obtained in the Supreme Court at Madras, I presume, that these judgments would have been received, as evidence of the debts recovered (provided, the defendants in the actions, were actually subject to the jurisdiction of the Zillah Court) and that process of execution, would then have issued from the Zillah Court against the villages and lands of the defendants, whereby, the plaintiffs would have obtained the fruits of their judgments.

But, it might have happened, that the parties defendants, when the judgments were obtained in the Supreme Court were not subject *personally* to the jurisdiction of the Zillah Court of Chingleput, and in that case, I suppose, that the possession of immoveable property, within the Zillah, would not have generally subjected such persons to that Jurisdiction so as to have enabled the Plaintiffs who had recovered Judgments at Madras to commence proceed-

ings at Chingleput on such Judgments, and if so, the latter parties, would have been remediless against the Villages and lands unless they could have been sold by the Process of the Supreme Court, and *this*, I think, furnishes a strong argument, in support of the sale, under the process of that Court.

If I am right, in assuming that Nazar Jacob Shamier, and Joseph Nazar Shamier, the Defendants, in the two actions at Madras, were *not* liable to every action that might be brought against them, in the Court of Chingleput, by reason of their possessing Villages and Lands within that Zillah: and if the Supreme Court had not a legal Authority to sell the Villages and Lands, it would necessarily follow that notwithstanding the Judgments obtained at Madras, the parties who recovered these Judgments, would be without any remedy against the Villages and Lands and that the parties defendants, might proceed to any other part of India, and receive the rents and profits of the Villages and Lands, setting their Judgment creditors at defiance.

This would be so contrary to Justice, that I am sure it never could have been a case contemplated by the legislature, without making a provision against it; and I confess that I do not perceive any serious inconvenience, or clashing of Jurisdiction by recognizing the right of the Supreme Court to *sell* immoveable property, situated within the Jurisdiction of the Zillah Courts.

The purchaser according to my view of the case must proceed in the Zillah Court to recover the possession of the property sold: and must take with him the same documents that would be required to support an action of ejectment in the Supreme Court, whereby he would satisfy the Zillah Court that as Purchaser, he is entitled to the right, title, and interest of the previous owner, in whose situation, the purchaser would be placed. No difficulty in respect of Jurisdiction would arise, for the tenants in possession, will be the parties defendants and their pottahs, leases, and cowls will be all protected; and the purchaser under the sale by the Sheriff, will be placed in the same situation as if he had purchased from the former owner.

With respect to the second paragraph of Mr. Chamier's letter, I think I have already submitted an answer: and I am clearly of opinion that the Judge of the Zillah Court and the other Officers of Government, are not bound to take any notice of applications from the Sheriff to deliver

possession of lands sold. The purchasers at the Sheriff' sale, are the persons, who must apply in a regular manner to the Zillah Judge, and observe the same forms, as are usual in similar cases.

I have the honor to be &c.,

(Signed) HERBERT COMPTON,

(True copies) *Advocate General.*

(Signed) HENRY CHAMIER,

Secretary to Government.

18th May, 1827.

In the event of cases occurring in your Court or any of those subordinate to you in which answers are required to interrogatories addressed to persons in the Island of Ceylon; I am directed by the Court of Sudr Udalut to state for general information and guidance, that the proper course to be pursued is for the officer presiding in the Court requiring the answers to forward the interrogatories in due form to the Secretary to Government in the Judicial Department with a letter requesting that answers may be obtained and transmitted back again.

16th August, 1827.

The question at issue is whether it is lawful for District Moonsiffs to sell land, paying revenue to Government, in satisfaction of Decrees, without the intervention of the Collector.

The Court have no doubt that it is; unless such sale involves a transfer of the proprietary right established by Regulation XXV. of 1802, in which case it *is not.*

Section XLVI. Regulation VI. of 1816, expressly gives to District Moonsiffs power to cause their Decrees to be executed by the sale of land, without any restriction or reference to the Collector; and Section LXI. implies that they have that power by authorizing Zillah Judges to employ them in the sale of real property in execution of Decrees of the Zillah Court the Register and Sudr Aumeens. The wording of the latter Section as well as the provision at the end of it for remunerating the Moonsiff so employed

evidently excludes the agency of the Collector or any other person except some subordinate agent of the Moonsiff himself. The proprietary right, established by Regulation XXV. of 1802, which is therein called landed property, property in lands &c., was evidently excluded from contemplation in framing Section XLVI. Regulation VI. of 1816. That Section is copied nearly verbatim from Section IX. Regulation III. of 1802, by which the same power is conferred on Zillah Courts; but the words "Zemindary, independent or dependent Talook or other estate" which comprise several of the terms descriptive of that particular right, are left out in Section XLVI.

When Regulation VI. of 1816 was enacted, permanently settled landed property could not be subdivided into portions paying a less permanent annual revenue than 500 pagodas: and as the Jurisdiction of District Moonsiffs over land paying Government rent extended at that time only to such as paid a yearly Government rent not exceeding 200 rupees, they never could have to adjudicate upon permanently settled landed property at all. It does not seem to have been considered that District Moonsiffs might have to realize the amount of a Decree against a person possessed of permanently settled landed property and no other, by the sale of that property: If this *was* considered, it can only be supposed that it was left as a point, not expressly provided for, to be disposed of under Section XIII. which directs that, in all such points, District Moonsiffs "shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah Courts in the trial and decision of Civil Suits." The discretion given to the Zillah Judge by Section LXI. does not supersede the rule laid down in Section IV. Regulation XXVI. of 1802, that all sales in satisfaction of decrees of lands paying revenue to Government must be made by the Collector. The discretion must be exercised subject to this rule.

The only argument, brought by the Collector of Tanjore, against the exercise of this power by the District Moonsiff is drawn from Section IV. Regulation XXVI. of 1802, which he considers to be of general application. But this is not the case: that Section and Regulation apply *only* to the particular right established by Regulation XXV. of 1802 and conferred by the Sunnud-i-Milkeut-Istimrar. All the revenue Regulations of 1802 were framed with reference to this particular right which, at the time when they were passed, it is well known was intended to be made universal throughout the territories of this Government.

Afterwards, when that intention was suspended, certain of those Regulations were expressly declared by, Regulation II. of 1806, applicable to districts where the land revenues were not permanently settled and consequently that particular right not introduced: but Regulation XXVI. was *not* so extended, nor has ever been since. The words Malguzary land or land paying revenue to Government have been declared by this Court to signify all lands not Lacheraj, and Malguzary and Lacheraj lands are frequently used in the Regulations as comprising between them all lands whatever. But for the purposes of Regulation XXVI. of 1802 they cannot be so applied: the thing there signified by land paying revenue to Government is evidently *that* the transfer of which is required to be entered in the register established by Section II.; and this is, and can be, only the particular right which was established by Regulation XXV. of 1802. For the proprietors, mentioned in Section II, are undoubtedly the persons selling and purchasing that particular right, and theirs are the only names which are provided for being entered in the register. The words land, landed estate, land paying revenue to Government, are frequently used as synonimous with this right from which they are, in truth, perfectly distinct; and this confounding of them with it can only be accounted for from the intention of rendering that particular right universal and the little knowledge possessed, when the terms were introduced, of the more near and immediate rights in the land. These lay below and beyond the view of those by whom the Regulations of 1802 were framed; but they existed nevertheless, were freely transferred under the permanent settlement, and have come forth, unaffected by it, in lands which have fallen into the hands of Government, and had their permanent settlement abolished.

Having thus disposed of the general question it only remains to observe that the proclamation and register proposed by the Collector of Tanjore would be unwarranted by the Regulations, and that it would be illegal to declare a transfer of land invalid and demand the revenue from the late occupier, because such transfer had not been registered.

11th October, 1827.

It appears that the Zillah Court required the Collector to sell certain Malguzary lands in satisfaction of a Decree; and subsequently, there appearing reason to doubt whether

those lands belonged to the party from whom the amount of the decree was to be realized, the Court ordered the sale to be suspended; but part of the lands had been already sold, though the purchase money had not all been paid; and the Collector applied for instructions whether the sale was to be considered legal and the rest of the purchase money demanded or not? The Zillah Judge replied that if, on investigation, the property sold should be found not to belong to the party cast, the sale would not be legal. The Collector hereupon submitted the questions—

Whether a sale of landed property, regularly made according to Regulation XXVI. of 1802, could be annulled, and the purchaser ousted, inconsequence of a right to the property at the time when it was sold being afterwards established on the part of some other than the person to whom it was then held to belong and on whose account it was sold?

Whether the proceeds of the sale (supposing them to be disposeable) should be paid to the person who has established his claim to the land sold; or whether he has forfeited them by not preferring his claim within the period limited in a publication fixed up as directed in Section XI. Regulation XXVI. of 1802 and containing, besides the particulars specified in that Section, a declaration that claims on the property to be sold, if not preferred within that limited period, will be held invalid.

A radical error runs through the whole of the papers submitted with this reference, viz., the assumption that Regulation XXVI. of 1802 applies to all sales in satisfaction of Decrees of lands paying revenue to Government. This is not the case: that Regulation applies exclusively to the particular proprietary right established by Regulation XXV. of 1802 and conferred by the Sunnud-i-Milkeut-Istimrar. This point is fully treated in the Court's Proceedings of date the 10th August last, which have been circulated;* and the Provincial Court are referred to the observations therein contained.

It is necessary therefore to divest the foregoing questions of all reference to Regulation XXVI. of 1802, which is not applicable to any part of the Zillah in question. That circumstance also renders it unnecessary to notice the further question raised as to the validity of sales when the publication prescribed in Section XI. of Regulation

* On 10th August, 1827.

XXVI. of 1802, has not been fixed up at the office of the Secretary to the Board of Revenue.

On the former of the two questions, when thus disembarrassed, the Judges think that the Provincial Court have pronounced a sound decision in the 10th para of their Register's letter to the Collector, 9th September 1825; viz., that the Courts are not competent to annul the sale on a summary investigation of claims set up to the property sold; and that the only mode of recovery left open to claimants, under such circumstances, is the institution of a regular suit; and this at any period; subject of course to the limitation prescribed by Clause fourth, Section XVIII. Regulation II. of 1802. The purchaser has obtained an apparent right of possession, of which he cannot be divested without a regular proceeding at Law. The suit should be against the party in possession; who, if ousted by the result of it, will also have his action for recovery of the purchase money and damages as the case may be. Against whom this action should be brought must be determined by the circumstances of the case.

With regard to the disposal of the proceeds of the sale, submitted in the 2d question, of course they cannot be forfeited, for the double reason, that Regulation XXVI. of 1802, does not apply and that, if it did, it contains no authority to declare claims invalid if not preferred before the date of sale. Such a declaration is illegal, and the Collector was liable to be prosecuted for damages whenever he acted on it. The proceeds of sale, if not paid over when the claim is preferred, should be held in deposit to abide the issue of the suit; when, if the claim is established, they will be available in satisfaction of any claim that the real owner may make good beyond the bare recovery of his property; and the supposed owner will still be liable for the amount of the decree in satisfaction of which the property was erroneously sold.

The question submitted in the Provincial Court's letter 4th November, 1825, arises wholly out of the misapplication of Regulation XXVI. of 1802; and is therefore already answered. The Judges do not call to mind any other enactment requiring the sale of Malguzary lands to be made by Collectors but Section IV. Regulation XXVI. of 1802; and therefore (they think) the Courts are not authorized by the Regulations to call upon Collectors to sell any thing but the proprietary right established by Regulation XXV. of 1802. All land which is *not Lacheraj, is Malguzary.*

24th January, 1828.

The question has been submitted to the Court of Sudr Udalut whether Clause first, Section III. Section IV. and Section VII., of Regulation II. of 1825, apply to instruments executed before the date of the promulgation of that Regulation or not.

The Judges think that they do.

1st Because, as respects Clause first, Section III. and Section VII. the wording plainly requires it; the limitation as to date in both applying, not to the execution of the instrument but to the act of the Court in receiving and adjudicating upon it. There is no reference in either to the date of execution of the instrument: and this is the more conclusive in Section VII. because in Section VI. Regulation XXXIV. of 1802, which is modified by that Section, there is an express limitation as to the date of the execution of instruments to be affected by it; and as this Section was before the framer of Regulation II. of 1825, it would certainly have suggested the express mention of a similar limitation as to date of execution, if such had been intended.

Secondly because all three enactments are remedial; and should be construed so as to advance the remedy; which would be left very inadequate to the evil if they were construed only to affect instruments executed *after* their promulgation.

There may seem to be some difficulty in giving retrospective application to Section IV. as respects instruments for sums between 16 and 64 rupees. That Section contains a general declaration of the legislature; not a rule of action for the Courts. It declares that instruments for sums not exceeding 64 rupees, and wills, shall not thenceforward be required to be on stampt paper: From the 1st January 1809, till the date of that enactment (15th April 1825) instruments for sums between 16 and 64 rupees, and Wills, *were* required to be on stampt paper: Clause first, Section III. declares that the Courts shall not admit without a penalty, all the same instruments, *except deeds of devise*, i. e. *wills*, as are enumerated in Section IX. Regulation XIII. of 1816, (which Regulation II. of 1825, rescinds) when not executed on the prescribed stamp; and the prescribed stamp undoubtedly means the stamp required by the law in force when the instrument was executed. It might therefore seem that the Courts cannot

still admit instruments for sums of from 16 to 64 rupees executed between the 1st January 1809, and the 15th April 1825, without the penalty.

But the Judges are unanimously of opinion that these niceties must be held to be overborne by the general intention and nature of the enactment: and that all instruments for sums between 16 and 64 rupees as well as wills, are admissible in the Courts, under Regulation II. of 1825, at whatever date they were executed, subject of course to the rule of limitation, prescribed by Clause fourth, Section XVIII. Regulation II. of 1802.

An instrument executed on a higher stamp than the prescribed one is clearly admissible without penalty: one chief object of imposing the stamp duty was originally declared to be to raise a revenue; and the revenue is more than secured, it gains by the mistake, which is not likely to be made for a fraudulent motive.

15*th February*, 1828.

The question has been submitted to the Sudr Udalut whether, under Section XIII. Regulation XIII. of 1816, costs ought, or ought not, to be included in the amount on which the value of the stamp for an appeal petition is required to be calculated.

The Judges think there can be no doubt that they ought not,—1st. Costs cannot be considered as part of "the amount or value of the property claimed" in the appeal: 2d, they are always considered as distinct from the amount adjudged; and, accordingly, they are realized (Clause ninth, Section XIV. Regulation XV. of 1816,) before the decree is executed; and in decrees in appeal which confirm the judgment of the lower Court and are required (Section XXXV. Regulation IV. and Section XII. Regulation V. of 1802,) to adjudge interest "on all sums receivable" under the original decree, interest is not allowed on costs.

21*st February*, 1828.

The Judges think that under Section VII. Regulation II. of 1811, the Sudr Udalut and the Provincial Courts may lawfully delegate to the Court of original jurisdiction

the receiving and the deciding on the sufficiency of evidence to wasting, &c., and the issue of process, if necessary, without previous reference to the higher Court. It is a matter of great importance to the parties that the decision and consequent process in such cases should not be delayed.—For the same reason the Judges think that, in an original suit, or on a reference from this Court, a Provincial Court may delegate to the proper Zillah or Auxiliary Court the same function.

28*th February*, 1828.

It appears that a district Punchayet having been assembled under Regulation XII. of 1816, to determine a boundary dispute, the litigant parties filed a Razeenamah; and the revenue Officer, by whose order the Punchayet was formed, applied through the Government Vakeel to the Zillah Court to annul the Razeenamah and cause the Punchayet to proceed to decide the dispute.

Hereupon the Zillah Judge has submitted the following questions:

1st Whether it is competent to him to issue any orders in the case of a Punchayet acting under Regulation XII. of 1816.

2d. Whether it is competent to the parties to file a Razeenamah.

The Judges answer both questions in the affirmative. With regard to the first; the Zillah Judge is the immediate superintending authority over the District Moonsiffs in his jurisdiction; he is the proper person to correct errors, in their proceedings, as he is, for them to apply to in cases of doubt and difficulty. The motion of the Government Vakeel in this case was simply an application to the Court to correct a supposed error in the Proceedings of a Punchayet assembled by a District Moonsiff.

With regard to the second question; the Judges see no reason why a Razeenamah should not be admitted in a cause before a Punchayet as well as in one before any tribunal. The submission to the award of a Punchayet is by consent of both parties, except in the particular case of one party refusing to refer a cause under Regulation XII. of 1816, to a District Punchayet, when the other party applies in writing for such reference; in which case the Collector has power (Clause seventh, Section V. Regula-

tion XII. of 1816,) to compel the former party to submit to it and to be bound by its award: but in this case the Law deems the refusal unreasonable and views the refuser in the same light as if he had consented. Therefore as the cause is submitted to arbitration by consent of both parties it may be *withdrawn* be consent of the same; and the Muchilka to abide by the award (if one has been executed) becomes void of course.

25th March, 1828.

The question has been submitted to the Court of Sudr Udalut what is the period allowed for preferring regular or special Appeals from the Decrees of an Assistant Judge to the Judge of the Zillah under Section V. Regulation I. of 1827.

The Judges have no doubt that the period intended by that Section is the period of 3 months allowed for appealing from decrees of Zillah Judges to the Provincial Court. Any other supposition would be inconsistent with the spirit of the Regulation which assigns to Auxiliary Courts, "the full power and authority of Zillah Courts," thus placing them in the stead of the Zillah Court, within their respective local jurisdictions, with the single exception of the appellate jurisdiction within 1,000 rupees lying to the Zillah instead of the Provincial Court; which exception does not effect the nature of their constitution.

27th March, 1828.

The question, has been submitted to the Sudr Udalut, what is the proper mode of proceeding in a case under investigation by a Punchayet, when one or more members of the Punchayet have died before the award is framed.

The Judges think that, in this case, the Punchayet must be considered as dissolved, de facto; and the Muchilka to abide by its award to have become null and void in law. The parties are therefore at liberty either to apply for a new Punchayet or to prefer their claims to any other competent tribunal. If they apply for a new Punchayet, the surviving members of the old one will, of course, be eligible to sit upon it, and (in favor of witnesses) the new Punchayet should be at liberty to avail itself of any depositions taken in writing before the old one, which are duly authenticated.

3d April, 1828.

The question, has been submitted to the Sudr Udalut, whether, on a Collector submitting his opinion to the Provincial Court under Clause first, Section IX. Regulation XII. of 1816, that one or more members of a Punchayet have been proved guilty of gross partiality, the parties affected by that opinion can claim, of right, a copy of it on stamped paper.

The Judges think that they cannot.

The proceeding, held by the Provincial Court in consequence of the Collector's opinion being communicated to them, is not of the nature of an appeal; nor is the Collector's opinion of the nature of a decree; if it were, the parties who were affected by it would have a right to a copy of it. But there is nothing, properly speaking, at issue between the party charged with partiality and the party charging, the Proceeding is not a suit for damages; but a process for the correction of error in the Proceedings of an inferior tribunal by a superior one. It is of course proper that the party charged with gross partiality should be heard in disproof of the charge; but this can be before the Collector only, by whom all the evidence in the case is taken and who decides finally upon it when the partiality charged is not proved to his satisfaction: when it is, the Proceeding by the Provincial Court is only a continuation and conclusion of that held by the Collector. If the Provincial Court should think further evidence necessary, the Judges think it would be competent to them to call for it.

23d April, 1828.

The three following questions have been submitted to the Sudr Udalut on the construction of Regulation V. of 1822.

The first question is, whether it is competent it a Zillah Court to admit fresh suits for the same causes of action which have been decided in appeal under Section XVI. Regulation V. of 1822; or whether such suits are barred by Section X. Regulation II. of 1802.

It is certainly not competent to a Zillah Court to admit such suits; as they have been already heard and determined by a competent authority; and their admission is

barred by Section X. Regulation II. of 1802. Of course a decision by the Collector under Section XI. Regulation V. of 1822 does not bar an original regular suit to try the proprietary right to lands or crops, that decision going only to determine the temporary right of occupancy or possession.

The second question is, whether the "Appeal by regular suit" allowed by Section XVI. Regulation V. of 1822, admits of further appeal.

The proceeding contemplated by Section XVI. Regulation V. of 1822 is itself an appeal; and therefore only a special appeal lies from it, subject to the restrictions on such appeals. As the proceeding to be held by the Zillah Judge under Section XVI. Regulation V. of 1822, is an Appeal, he is competent to call for the Collector's proceedings in the case; he is also competent to take any fresh evidence that he thinks proper.

The third question is, whether in an appeal under Section XVI. Regulation V. of 1822, against a decision by a Collector under Section XI. of that Regulation, the Zillah Court is competent to stay execution of that part of the Collector's decision which regards costs and damages.

The Judges think that the restriction laid upon the Collector by Clause second, Section II. not to levy costs or damages till after the 30 days allowed for appeal, must be held to apply to the costs and damages awardable under Section XI: there is an obvious reason for placing that restriction immediately after the powers granted by Clause first, Section II; and the omission to make it applicable to decisions under Section XI. is no doubt an oversight; no reason can be assigned for a distinction between that and the other cases.

28th April, 1828.

To the four Provincial Courts.

GENTLEMEN,

I am directed by the Court of Sudr Udalut to transmit for your own information and guidance and that of all the Zillah and Auxiliary Courts Subordinate to you the accompanying copy of a Circular letter from the Secretary to Government to all Collectors.

" CIRCULAR.

To Principal Collectors, and Collectors.

SIR,

The Right Honorable the Governor in Council having been pleased to resolve, under date the 6th November last, that until further orders, vacancies in the situation of Town Cauzy in the Provinces, shall be filled up by the Provincial Courts on the recommendation of the Zillah or Assistant Judges; I am directed to desire that the established allowances of the office may be paid from the date of appointment, which will, in each case, be notified to you by the Zillah or Assistant Judge, to such persons as may have been nominated to the situation in your district by the Provincial Court subsequently to the 6th November, 1827.

I am

Sir,

Your most obedient Servant;

(Singed) HENRY CHAMIER.

(A true copy) *Sec. to Govt.*

(Signed) HENRY CHAMIER.

Fort St. George, 25*th April*, 1828. *Sec. to Govt.*"

8*th May*, 1828.

A case having come before the Sudr Udalut in which the Proceedings and opinion of a Collector submitted to one of the Provincial Courts under Clause first, Section IX. Regulation XII. of 1816, was entered by that Court on its file as a regular appeal; the Court think it proper to notify that that practise is erroneous: the Proceedings and opinion in question have none of the attributes of an appeal; the same matter is not at issue in them as in the original suit before the Punchayet; and the Provincial Court cannot enter upon the merits of the original suit. The proceedings in the Provincial Court is a miscellaneous proceeding and should not be entered on their file at all.

22*d May*, 1828.

The Court of Sudr Udalut direct that the Register pre-

scribed by Section III. Regulation VI. of 1828, shall be kept in the following form.*

The Register prescribed by Section IV. Regulation VI. of 1828, is to be kept in the following form.*

These Registers should be written in large and distinct characters on a sheet of Europe paper of the largest size —on one page in the Native language—on the opposite page in the Persian; and the different entries made consecutively, till the sheet is filled on one side; only one side is to be written upon.

When the latest date entered in the fourth column has expired, the sheet should be taken down from the place in the Court-house, where it was fixed up and has remained; and preserved as a record of the Court. Thus it will probably be seldom necessary that more than 2 or at the most 3 sheets should remain fixed up at the same time.

The attention of the several European Courts is called to the importance of dispatch in preparing the translations of decrees into the Native languages: without this, the effect of Regulation VI. of 1828, might be virtually to extend the periods limited for preparing appeals and to delay the execution of decrees; both of which are, in themselves, contrary to the interests of justice.

16*th June*, 1828.

With reference to Regulation IV. of 1828, the Courts of Sudr and Foujdaree Udalut, under the Sanction of the Governor in Council, direct that the rate of compensation to be fixed for translations of Judicial proceedings shall hereafter in no case exceed one rupee for every three hundred words of the original; but, shall be fixed, within that maximum, at such rate as local circumstances, or the occasion, may appear to render proper.

28*th June*, 1828.

Great inconvenience having arisen for want of a general rule in regard to the preparations of pleadings, motions, and petitions, presented to the Court by parties in person or by Vakeels, the following rules are made to be in force

* Forms omitted

from this day, with reference to Clause first, Section XXIII. Regulation XIII. of 1816.

1st. Each sheet of pleadings, motions, miscellaneous petitions, &c., shall contain not more than 30 lines.

2d. Any pleading, motion, or petition prepared contrary to the above rule will be rejected for informality.

3d. All papers filed in Court shall, immediately after the breaking up of the Court, be delivered to the Seristadar for examination of stamps, and he shall, if he find them correct, certify the correctness on the same day.

4th. In copies of decrees written in English, or in one of the Native languages, each paper shall contain 25 lines in large letters and in the most legible manner.

5th. When the decree is translated and certified, the party requiring an attested copy thereof shall deliver, at once, to the Seristadar the same number of stampt rolls as that on which the office copy is written; and if the number supplied be found insufficient, the Court will supply the deficiency and charge the party with the value of the additional sheets used; the day on which the copy is ready for delivery shall be certified on the back of it; and shall be considered as the day on which it has been delivered, whether the party, either in person or by Vakeel, attends and receives it or not.

28th June, 1828.

Referring to some of the Diary proceedings accompanying the records transmitted by the Northern Provincial Court in appeals from their decisions preferred to this Court, the Judges find that a practice prevails there, of referring to their Seristadar, for examination of the correctness of stamps, every pleading, motion and petition, and that these papers are not returned to Court for some days. The Judges also find that exhibits produced by Parties or Vakeels in suits are referred to the same Officer to examine and report, whether or not they are in accordance with points to be proved. The Judges conceive these Practices highly objectionable: the first of them tending to occasion delay in the progress of the business, and the second investing the Seristadar with a power wholly unwarranted by the Regulations. It is the duty of the Judges trying the case, to examine the exhibits and satisfy themselves whether, or not, they are in accordance with the

points and whether or not they are material to the issue of the case.

The Court of Sudr Udalut, therefore, direct that the Provincial Court for the Northern Division be desired to amend the first practice, by delivering over to their Seristadar all the papers immediately after their being presented in Court, and by requiring him to certify, *on the same day*, the correctness or otherwise of the stamps, that, if they are certified to be correct, they may be filed on the record; otherwise, returned to the party presenting the same: in either case however the Provincial Court should satisfy themselves that the stamp is, or is not, correct.

The Provincial Court should discontinue altogether the second practice viz., referring exhibits to the Seristadar for examination.

30th July, 1828.

The questions have been submitted to the Sudr and Foujdaree Udalut in what manner Precepts with proceedings, or orders, of a Superior Court ought to be sent and returned to; and whether a return should be made to Precepts which simply send orders for the information and guidance of a lower Court.

The Court of Sudr and Foujdaree Udalut direct that, in all cases, the Precept be written on the first side of a separate sheet of a paper; and that the proceedings, or order, written on another distinct sheet, be enclosed in the former. The return to be copied on the same sheet as the Precept, which is to be sent back, with the return, to the Court which issued it; the Proceedings, or order, to remain as a record with the lower Court.

When the words of a Precept require a return to be made, a return ought, of course, to be always made: but where the words of the Precept do not require a return, it is not necessary to make one. It is always taken for granted that the orders of a superior to a subordinate authority are forthwith obeyed.

11th October, 1828.

I am directed by the Court of Sudr Udalut to convey to you their desire that you call upon the Zillah Judges of

your division to submit copies and translations of the legal opinions furnished by their Law Officers during the current and following years, through your Court, and not direct as heretofore. As the papers are generally very short, it will be easy for you to transmit them together with the civil Futwahs or Vyavasthas of your own Law Officers, so as to reach this Office by the 1st of February in each year. The questions and answers are always to be copied on Foolscap paper, 30 lines in a page, the answer underneath the question, and the translation must not be on the same paper with the writing in the original language.

3d November, 1828.

I am directed by the Court of Sudr and Foujdaree Udalut to transmit to you the accompanying copy of an extract from a Minute of Consultation, dated 3d ultimo, which has been communicated to this Office, in order that your Indents for the specified description of Cloths, and those of the Judicial authorities under you, may be addressed, in the form prescribed, to the Secretary to the Clothing Board.

Extract from the Minutes of Consultation, dated 3d October, 1828.

"Read the following letter from the Clothing Board.

25th September, 1828.

As it appears by the foregoing letter, that Cloth adapted for Peon's Belts and Office Tables can be supplied from the Clothing and Retail Stores at 100 por Cent. below the cost of Cloth lately purchased for those purposes by the Superintendent of Stationery: It is resolved, that all indents for Cloth required for the use of Public officers shall, hereafter, be made by heads of Departments on the Secretary to the Clothing Board; and that the following form be observed: and that indents shall continue to be countersigned as heretofore.*

Resolved that the Accountant General be instructed to issue the necessary orders as to the manner in which the supplies to departments should be brought to account.

Resolved that the Clothing Board be placed in communication with the Superintendent of Stationery for the purpose of ascertaining the quantity of Cloth annually re-

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Form omitted.

quired for the above purposes and that they be authorized to make a proportionate increase in their indents on the Honourable the Court of Directors."

8th January, 1829.

Read petition presented by Ponnapaukum Balakistna Moodeliar, of the Zillah of Chingleput.

With the above petition is delivered an authentic extract from the proceedings of the Centre Provincial Court, under date 19th September, 1828, the 2d para of which is as follows. "The Provincial Court, having attentively considered the provisions in Clause second, Section XII. and at the close of Section XXII. Regulation XIII. 1816, are of opinion that the Zillah Judge has rightly construed the Regulations—Copies of judicial proceedings, accounts, statements, reports, or other documents, *which individuals require for use or reference* may be authenticated on stampt paper of eight annas value; but copies of bonds or other documents specified in Section XI. of the said law" if "*prepared as legal vouchers,*" or, "to be filed, or otherwise received in any Court of judicature, can be authenticated only on stamps or Cadjans, of the rate prescribed by that Section," for the "originals of such deeds."

The Court of Sudr Udalut concur in this interpretation of the Regulation above quoted and resolve to circulate copy of para 3 of these proceedings (for the information and guidance of the lower Courts) to each of the other Provincial Courts. It will be proper at the same time to to explain that when an original document is no longer required, it may be returned to the party who filed it, a copy if requisite being retained, as provided in Clause third, Section XXII. Regulation XIII. 1816; and that when copies of the documents specified in Section XI. of the said law are prepared as legal vouchers to be filed in evidence, and cannot be written out on stampt paper of the same value as the original, it will be sufficient that the total value of the stamps used for the purpose shall equal the amount of the precribed stamp.

8th January, 1829.

With reference to the new Regulation which has been passed, as mentioned in my letter of this date in the Fouj-

daree Department, I am directed by the Judges of the Sudr Udalut to desire that the several Courts may for the present be instructed to suspend the preparation of the usual abstract registers of Civil suits disposed of in the *present month*, until further orders. It is the intention that these statements should for the future be forwarded only quarterly, and not monthly as hitherto, and new forms will be circulated for your guidance and that of the other Civil tribunals under you to take effect from 1829.

For the past year 1828 the forms hitherto in use are to be observed.

You will call upon the several Judges under you to furnish up to the 31st December, 1828, a statement in the enclosed form No. 6,* and to continue to forward a similar one on the 30th June, and 31st December, of each successive year the whole to be transmitted by you to this office for the information of the Honorable the Court of Directors.

19th January, 1829.

With reference to my letter, under date the 8th instant, I am directed by the Judges of the Sudr Udalut to forward to you the enclosed new forms* for the statements connected with *Civil* suits which you will circulate for the information and guidance of the several subordinate Courts in your division, from the commencement of the present year 1829.

The forms A, for the half yearly reports of causes depending should be immediately furnished by the lower Courts, for the last half year, terminating with the 1st instant, and for each subsequent half year.

The forms B, for Abstract Registers of Civil suits disposed of, are to be furnished by the lower Courts quarterly, instead of monthly, or for the periods terminating on the 31st March, 30th June, 30th September, and 31st December in every year, commencing with the 31st March next.

You will endeavour to forward these statements as hitherto to this Court, within the month following the period for which they are prepared, and with the usual remarks and explanations.

It is clearly to be understood that, in the abstract of suits "dismissed" are to be included all suits not decreed on

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Forms omitted.

their merits, or settled by Razeenamah, whether withdrawn by the plaintiff or dismissed for default or other cause without inquiry into their merits either before, or after, the pleadings are filed. If the plaintiff is non-suited after an investigation of the merits of the cause, the suit will of course be included as one decided on its merits; and when a plaintiff withdraws the suit, it is not to be inferred that he has come to any adjustment with the defendant, unless they jointly file a Razeenamah.

22d January, 1829.

With reference to the powers vested in Zillah Judges, by Section XI. Regulation VIII. 1816, to refer to the Sudr Ameen appeals from the decisions of district Moonsiffs, I am directed by the Judges of the Court of Sudr Udalut to observe that, in all practicable cases, it seems highly desirable that the appeals from the native Judicatures should be decided by the European authorities; and that the reference of such suits to the Sudr Ameens should be avoided, except where the state of business renders it necessary; and that, in no case should it be resorted to, if the integrity or impartiality of the Moonsiff seems involved in the appeal.

Without in any respect affecting the power of referring such cases to the Sudr Ameens, which the Regulations vest in the Zillah Judges, you will be pleased to communicate the above for their guidance, in duly exercising the same.

4th February, 1829.

The Assistant Judge of the Auxiliary Court of Canara has brought to the notice of the Judges of the Sudr Udalut an error in the Persian translation of Section II. Regulation XXI. 1802, which may seriously affect its construction by the Mahomedan Sudr Ameens or others, consulting that version of the code, and which therefore requires correction. The negative particle is erroneously inserted; and in lieu of the Persian rendering the original English "the cause of action shall exceed two hundred Arcot rupees," the translation runs "shall *not* exceed, &c."

The Judges desire that this error be pointed out to the Mahomedan Sudr Ameens, and that all the Persian translations of the Regulations in the possession of your Court,

or of those subordinate to you, may be corrected, by striking out the negative particle in question.

18th February, 1829.

With reference to Regulation IX. 1828, recently promulgated, I am directed by the Judges of the Sudr and Foujdaree Udalut to state that, notwithstanding the rescission of the Sections of the undermentioned Regulations, their provisions are to continue in force as rules of office, until altered by further orders from this Court; and to desire that orders to this effect be circulated to the Village and District Moonsiffs and Sudr Ameens within your division.

1816	Reg.	IV.	Sections	XXXVI. XXXVII. & XXXVIII.
"	"	V.	"	XIX.
"	"	VI.	"	XLI.
"	"	VII.	"	XXI.
"	"	VIII.	"	XII.

5th March, 1829.

In consequence of a reference from the Western Provincial Court, the Judges of the Sudr Udalut have been induced to reconsider the instructions conveyed in a letter to that Court dated 15th July, 1828, on the subject of the remuneration to be allowed to an Acting District Moonsiff.

It appearing that were this remuneration confined to the established fees on all suits decided or adjusted by him, the person actually performing the duties of the office might in some cases receive little or nothing from this source, the expences of the Moonsiff's establishment being first defrayed out of the fees; the Court resolve to direct, by a circular order that whenever a person may be appointed to act as a District Moonsiff, during the absence of the Moonsiff from his station on leave or otherwise, the person so acting shall receive in addition to the established fees on suits decided or adjusted by him, one half of the the fixed salary attached to the situation.

11th May, 1829.

Read letter from the Provincial Court for the Northern Division, forwarding one from the Zillah Judge of Chica-

cole, in which that officer submits, for the orders of this Court, the question "whether the Courts, in enforcing their decrees, should cause to be levied the amount of interest that may become due, until the final execution of the decree.

The practice of the Courts in this respect has been various. Nor has that of the Sudr Udalut been uniform. Under date the 8th May, 1810, and the 3d June, 1824, they decided that the interest accruing from the date of a decree until its execution should form the subject of a new suit; whilst on the 23d November, 1826, and the 11th and 28th December, 1828, they granted the same, by an order of Court.

A decree can only specify the amount of interest due up to its date; but a suit does not terminate with the decree; it is not brought to a conclusion until the decree has been executed. If interest has been adjudged to the date of the decree, there can be no doubt that it is due to the date of execution; and the only question seems to be, whether it should be recovered by an order of Court in continuation of the original suit, or by a new suit altogether.

Though a new suit might be more regular, it is of great importance to prevent all unnecessary litigation, and the improper delays which the unsuccessful party often throws in the *way* of the execution of decrees; and as the merits of the case are already fully before the Court, the Judges see no advantage to be derived from exposing the successful party to the delay, and the unsuccessful party to the expence, of further litigation by a new suit, swelling the files of the Courts, and occupying the time of the Judges with matter which can be at once as justly disposed of, by those who pass the decree, in a summary manner by order of Court.

It is, accordingly, ordered that when interest is adjudged in the decree up to its date, the Courts, by an order of Court, do enforce payment of the same from that date, up to the date of its execution, unless delay in the execution of the decree be attributable to the Court itself, or the unsuccessful party prove, to the satisfaction of the Court, that unnecessary delay has taken place on the part of the successful party in moving for execution of the decree.

The consideration of this subject has brought before the Judges another question of practice in the Courts, respecting which also it is desirable that a uniform rule should be laid down viz., whether when interest is adjudged in a

decree in an original suit it may be adjudged only up to the date of the plaint, or up to that of the decree also.

In appeal No. 7, of 1817, this Court, on the 5th November, 1818, ruled that interest could be adjudged up to the former date only, because including interest up to the latter subjected "the defendant in the original suit to the payment of an institution fee on the appeal, above the amount for which he is justly liable."

But if interest up to the date of the suit forms a component part of the demand in the original plaint, there is no cause why interest up to the date of the decree should not equally form a component part of the demand in appeal. It is interest which is demanded; and the sole reason for entering a specific sum under that head in the plaint is that the institution fee may be ascertained, and consequently the Court which has cognizance of the suit determined. It is not that this specific sum only is required, the further interest which may accrue from the necessary delay in the Courts in bringing the suit to a termination was not due at the time of the plaint, but may be due at that of the decree; and, if so, should in equity be adjudged, and will form a substantial component part of the appeal,—upon which the institution fee in appeal, now consolidated with the stamps, ought to be calculated.

Besides, Section XXXV. Regulation IV. 1802, and Section XII. Regulation V. 1802, declare that, in the confirmation of the decrees of the lower Courts, the Courts of appeal shall adjudge interest only from the date of the decrees of the lower Courts, thereby evidently recognizing the principle of the Higher Courts adjudging interest up to the date of their own decrees, and implying that the lower Courts may adjudge it, not up to the date of the plaint only, but to that of their decrees also.

Ordered, accordingly, that, when interest is adjudged by the Courts, in their decrees, it be invariably granted up to date of the decree, and not of the plaint only, unless reasons for a contrary proceeding are stated in the body of the decree.

Resolved, that extract from these proceedings be by precept circulated to the four Provincial Courts of Appeal, and by them to their subordinate Courts, for the guidance of both the European and Native judicial tribunals as to the date up to which interest may be adjudged on the principal demand, and the enforcement thereof, up to the time of execution.

30th May, 1829.

Read letter dated the 24th ultimo, from the Zillah Judge of Chicacole, submitted through the Northern Provincial Court, proposing certain questions as to the granting of copies of documents by district Moonsiffs, with reference to this Court's circular orders of the 8th January last.

The Zillah Judge requests instructions on three points viz,—

1st—Whether a district Moonsiff is to be considered as a person authorized, under Clause second, Section XII. Regulation XIII. of 1816, to grant copies of bonds or other documents as legal vouchers.

The Court of Sudr Udalut are of opinion that he is not, and that under the provisions of Clause first, Section XLI. Regulation VI. of 1816, by which the Zillah Court is declared to be the depository for "all the original papers and documents" in every case decided by a District Moonsiff, the Judge, Assistant Judge, or Register, is the only Officer competent to furnish copies of such documents when required as legal vouchers.

2d—The Zillah Judge wishes to know whether a District Moonsiff is empowered to grant authenticated copies of papers which individuals may require for use or reference, or for the purpose of being substituted in the record for the originals; and if so, whether such copies are to be furnished on unstampt paper.

Under Section XXX. Regulation XIII. of 1816, individuals are at liberty to make for their private use copies of judicial or other documents "on any paper which they may prefer," but with reference to the opinion expressed above on the first question, the Court of Sudr Udalut do not think that a District Moonsiff should be permitted to substitute any copies whatever for the originals in the record of a suit. It is only the Zillah Judge or Assistant Judge who can authorize the same after the record has been received.

The 3d point submitted by the Zillah Judge, is, whether if a copy of a bond under 64 rupees, or of any document executed prior to the stamp Regulation, be required as a legal voucher, such copy is to be prepared on unstampt paper and admissible as an exhibit under Section XXXV. Regulation VI. of 1816.

The Zillah Judge would seem to have proposed this question without sufficiently considering the express words of the Section quoted by him, in the first Clause of which

District Moonsiffs are only prohibited from filing as an exhibit any document "of a description *which is or may be required,* to be written on stampt paper or stampt cadjan," unless it shall have been duly executed on one or the other material. The same point however was lately brought under the consideration of this Court as a general question, by the Zillah Judge of Canara, and the Court on that occasion ruled that neither copies of Deeds or Instruments for sums under 64 rupees, nor of documents executed on stamps of 2 annas previously to the promulgation of Regulation II. of 1825, need now be made on stampt paper for the purpose of being authenticated as legal vouchers.

It appearing to be desirable that the opinion of this Court, on the several points above noticed, should be circulated for general information and guidance; ordered that extract of these proceedings be transmitted to the four Provincial Courts of Appeal, to be by them communicated to the several Zillah and Assistant Judges within their respective jurisdictions.

8th June, 1829.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you for the purpose of being circulated for the information and guidance of the several Zillah and Assistant Judges within your Division, copy of a letter from the Secretary to Government in the Judicial Department dated 22d ultimo, enclosing copy of a letter from the Military Board dated the 24th February last, respecting public buildings together with an extract from the resolution of Government on the subject.

To the Judges of the Sudr Udalut,

GENTLEMEN,

I am directed by the Right Honorable the Governor in Council, to transmit, for your information and guidance, the annexed copy of a letter from the Military Board, dated the 24th February last, respecting buildings for the public use, with extract from the resolution of Government on the subject in the Military Department.

I have the honor to be, &c.,

FORT ST. GEORGE: 22*d May,* 1829.

(Signed) JOHN ORR,
Actg. Sec. to Govt.

To the Right Honorable Stephen Rumbold Lushington, Governor in Council, &c. &c. &c.

SIR,

We have the honor to bring to the notice of Government that we are required to forward for the information of the Honorable the Court of Directors, a statement annually of the public buildings, Civil as well as Military and also of those hired for public purposes, at the Presidency. For the latter the amount of rent paid is to be shewn, but as several of the buildings are hired for Civil, as well as Medical purposes, without any communication with our Board, there is a difficulty experienced in making out the statement correctly, as we are not, in such cases, informed of the conditions of the lease, nor of the amount of the rent paid.

To provide a remedy for future occasions, we take the liberty to propose that when private buildings may be required for public use, we, be put in communication with the Department for which it is wanted, and, the conditions being settled, that such agreement as may receive the sanction of Government be lodged in our office, and that the monthly bills for the rent, be passed under the signature of our Secretary.

The adoption of such rules would enable us to prepare the statement, alluded to in the first part of this letter, correctly, as well as to afford prompt information to Government, when occasion might require; and several other inconveniences, which are now experienced in regard to the hiring of houses, would be avoided. We would further beg to propose that a statement of all hired buildings, Civil as well as Military, with the exception of those in the Revenue Department, out Stations, should be forwarded to our office half yearly, for the purpose of being recorded, and referred to when necessary.

We have the honor to be, &c.,

FORT ST. GEORGE: *24th February*, 1829. (Signed) W. G. PEARSE. W. GARRARD. J. HANSON. B. R. HITCHINS.

Military Department.

Extract from the Minutes of the Right Honorable the Governor in Council, date the 20th March, 1829.

"Resolved in conformity with the recommendation con-

veyed in the foregoing letter that the half yearly returns be made to the Military Board of all hired buildings in the Public, Judicial, Commercial, and Military Departments, and that whenever the Government shall deem it necessary to depart from the general practice of hiring or purchasing houses for purposes connected with the above mentioned departments otherwise than through the medium of the Military Board, the particulars of the agreements shall be invariably communicated to that Board.

It is further resolved that all Bills for the hire of houses rented for public purposes at the Presidency, provided they do not belong to the Revenue Department, shall be passed for payment on the Countersignature of the Secretary to the Military Board."

(True copy and extract,)

(Signed) JOHN ORR,

Act. Sec. to Govt.

23d June, 1829.

Read letter dated the 5th instant, from the Judge in the Zillah of Canara referring to this Court's proceedings of the 11th ultimo, on the subject of allowing interest in Decrees.

The Zillah Judge submits the question "whether interest exceeding the principal ought not to be allowed when the excess arises from the delay of Court proceedings, or failure to render immediate payment of the amount adjudged."

The Court of Sudr Udalut observe, on referring to the Reports of cases determined in the Court of Sudr Dewany Udalut in Bengal that this question was decided by them so far back as the year 1808, in a suit in which that Court ruled that the restriction contained in the Regulations against a judgment for interest exceeding the principal, when the legal interest "shall have accumulated so as to exceed the principal," "is not applicable to a case in which the accumulation is subsequent to the institution of the suit, and not ascribable, in any degree, to procrastination on the part of the creditor."

The Court of Sudr Udalut, concurring in the justness of this construction of Regulation XXXIV. 1802, resolve to circulate the same to the four Provincial Courts of appeal

for the information and guidance of their own and of the Courts subordinate to them respectively.

9th July, 1829.

" *To the Judges of the Sudr Udalut.*

GENTLEMEN,

I am directed by the Right Honorable the Governor in Council, to transmit for your information and guidance, the accompanying copy of a G. O. by Government, dated the 5th May last.

I have the honor to be, &c.,

(Signed) JOHN ORR,

Actg. Sec. to Govt.

FORT ST. GEORGE: 3*d July*, 1829.

No. 117.

Fort St. George, 5th May, 1829.

G. O. BY GOVERNMENT.

The Right Honorable the Governor in Council is pleased to publish the following Regulations, in conformity to instructions from the Honorable the Court of Directors, communicated in their Military General letter to Bengal, under date the 28th May, 1828, to have effect from the 1st of July next.

Medical Officers.

The Hospital allowances for Medicines, &c., at present drawn by Medical Officers in charge of Corps, detachments, and establishments, European and Native, are abolished; Hospital necessaries of every description, with exception of Europe Medicines and Instruments, (which will be supplied on indent checked by the Medical Board) are to be furnished by the Commissariat; and, in lieu of the present, the following allowances are authorized.

To every Surgeon in charge of a Regiment or Battalion, the Batta of Major, in lieu of that of Captain, with a Palanquin allowance of 42 rupees a month, and to every Assistant Surgeon in charge of a Corps, or of a detachment not less than 5 Companies of Natives, or two of Europeans, the Batta of Captain in lieu of that of Lieutenant, with 42 rupees a month for a Palanquin—the Batta so payable to be half, or full, according as the troops receive it.

To all Medical Officers holding separate charges, inferior to those above specified, a Palanquin allowance of 42 rupees a month is authorized.

Officers Commanding Posts, and Stations, are directed, on the publication of this order, to cause Committees to be assembled, of which a Commissariat Officer, where one may be present, it is to be a Member, to report upon the number, and value, of the cots in use in Native Hospitals, and according the determination of these Committees, compensation will be allowed to the Medical Officers, to whom the cots may belong, when they shall be made over to the charge of the Commissariat.

The abolition of the Medical contracts, for victualling and Medical supplies, being general, applies equally to Garrison, Cantonment, and field Hospitals, Lock Hospitals, the Eye Infirmary, &c., the Commissariat will adopt immediate measures, in communication with the Medical Board, for the supply of all Hospitals, particularly where no Commissariat Officers reside.

All charges at present payable for Medical expenditure, Servants, &c., extra Tent allowance for Cumblies, &c., are to be discontinued; and all authorized stoppages from the troops are to be brought by Paymasters to public credit.

By order of the Right Honorable the Governor in Council.

(Signed) ROBERT CLERK,
Act. Sec. to Govt.

(A true Copy)
(Signed) ROBERT CLERK,
Act. Sec. to Govt.

(A true Copy)
(Signed) JOHN ORR,
Act. Sec. to Govt."

9th July, 1829.

"To A. D. CAMPBELL, Esq.

&c. &c. &c.

SIR,

I have the honour, by desire of the Board for the College of Fort St. George and for public Instruction, to transmit

to you, the accompanying copy of a letter from Lieutenant Colonel T. Warren, under date the 20th instant, on the subject of certain passages in his work on the division of time, entitled "Kala Sankalita."

I have the honour to be, &c.,

(Signed) M. I. ROWLANDSON,
Acting Secretary.

COLLEGE: 27*th June*, 1829.

Pondicherry, 20th June, 1829.

To the Secretary to the Board of Superintendence for the Public Instruction and the College of Fort St. George.

SIR,

Referring to pages 71, and 164 of the *Kala Sankalita*, and XVII. of the Tables, it has been found after that work had been considered as an authority for expounding dates from the European to the Solar Calendar of the Tamils, and the Luni Solar of the Teloogoos, in the Courts of Justice under the Madras Presidency, that the exclusion of the *Solar date* from private deeds, and contracts passed between individuals in Tellingana (and particularly in the Northern Circars) was by no means so absolute as was advanced at the said pages on the information first furnished to me by the College Pundits. Cases have occurred in some of the Courts since the publication of that work which clearly prove that although the Officers of Government no longer use the Luni Solar division of time in their public transactions, yet the Natives themselves continue in many places to the Northward, to date their contracts and personal documents, merely by recording the current year of the *Varahaspati* Cycle and the *Titty* (or Lunar day) on which they are executed, without any mention whatever of the Solar date, or the year of the Cali age in use in the Southern parts of India.

As this circumstance contradicts what has been alleged in several parts of the work, and as documents dated only in *Luni Solar Time* may fall again under the cognizance of the Magistrates to be expounded, I have judged the discovery to be of sufficient importance to be communicated to the Board of Superintendence with a view to their pointing out to those authorities which have been furnished with copies of the *Kala Sankalita*, the remedy to be resorted to in such occurrences which is of no difficult attainment.

For the Varahaspati year being given in the documents, may be found in the VIII. column of the 1st general Table;

and in a line with it the corresponding expired year of the Cali yug (column III).

Now with this, referring to the 2d General Table (column II.) you find in a line with it (column X.) the *Ahargana* for the beginning of the purposed Luni Solar year, according to the Surriah Sidhauta; by the help of which the meanest Calendar maker to be procured in the neighbourhood, will compute with ease, every *Titty* of the proposed year, as well as the corresponding Solar date: from which the European one may readily be deduced.

I have the honour to be, &c.,

(Signed) JOHN WARREN.

(A true copy)

(Signed) M. I. ROWLANDSON,"

Acting Secretary.

20th July, 1829.

Ordered that extract* from this Court's proceedings of the 12th March, 1829, from para 1 to 11 inclusive, be, by precept, forwarded to the four Provincial Courts, to be by them circulated to their several subordinate tribunals, as containing the construction to be put upon Regulations XXVII. and XXVIII. 1802, and an explanation of the persons to whom the same are respectively applicable.

"Read again special appeal petition presented by the Vakeel Sreenuwasachary.

The foregoing is an application on behalf of the Principal Collector of Malabar for the admission of a special appeal from the decree of the Provincial Court for the Western Division, in appeal No. 16 of 1825, reversing the judgment of the Zillah Court of Malabar in the original suit, No. 296 of 1825, whereby the proprietary right of the defendant, Mooriatta Kootty Atan, and that of his heirs, to the family estate, was decreed to be forfeited to Government, under the provisions of Clause second, Section XIV. Regulation XXVII. of 1802.

From the Decree of the Zillah Court in this case it appears that the Sub-Collector in charge of the Revenue Cutcherry of the Northern Division of Malabar had, by direction of the Principal Collector, deputed peons with a writing dated the 22d March 1825, requiring the defen-

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* Circulated to Collectors on the 14th March, 1829.

dant to pay the arrear of revenue due by him (rupees 100) or to appear before him in company of the peons, for the purpose of being conveyed to the gaol of the Zillah; that the peons, not having found the defendant, affixed the writing to the wall of his house; that the defendant, neither paid the arrear nor appeared before the Sub-Collector in obedience to the order; that the Principal Collector of Malabar, thereupon moved the Zillah Court by an application dated the 4th April, 1825, to arrest the defendant as a Revenue Defaulter, under the provisions of Clause first, Section XIV. Regulation XXVII. of 1802; that the Zillah Court on the 23d April, 1825, issued a publication requiring the defendant to deliver himself into its custody within four weeks, calculated from the day following the date of the publication; and that the defendant having failed to surrender himself within the time limited, the Zillah Court adjudged his proprietary right, and that of his heirs, in the estate, to be forfeited to Government.

On appeal by the defendant, Mooriatta Kootty Atan, the Provincial Court reversed the decision of the Zillah Judge. The main ground of the reversal was that the action by the Principal Collector was not sustainable under the provisions of Section XIV. Regulation XXVII. of 1802, even though that Regulation applied to Districts under Ryotwar settlement, which the Provincial Court considered extremely doubtful, with reference to the provisions of Section XXXVIII. Regulation XXVIII. of 1802. On the supposition that Regulation XXVII. of 1802, was applicable, the Provincial Court thought it incumbent on the Principal Collector to show, first, that the defendant was an actual proprietor of land under that Regulation: Secondly, that an arrear was due which he, the Collector, could not recover after having exhausted all his powers and means of compelling payment: and thirdly, that the defendant was in open and avowed resistance to his authority; and upon all these points the Provincial Court considered the evidence defective or the proof altogether wanting.

A general question of the highest importance is raised in this case; and the Sudr Court have given to the consideration of it a proportionate decree of care and attention.

The question is whether the provisions of Regulation XXVII. of 1802, "prescribing the modes for the recovery of arrears of public revenue from actual proprietors of land, or farmers of land holding farms immediately from Government," are applicable to the province of Malabar and

other Districts which are under, what is termed, a Ryotwar settlement: The Provincial Court think those provisions inapplicable, because on a consideration of the whole tenor of Regulation XXVII. in connexion with Regulation XXV. of 1802, there appears no analogy between the landed proprietor and principles of assessment therein referred to, and those obtaining in Malabar; and they refer to Section XXXVIII. Regulation XXVIII. of 1802, as pointing out the rules to be observed by a Collector for the recovery of arrears in Districts under a Ryotwar settlement.

By Section II. Regulation XXV. of 1802, the resolution was declared of fixing a permanent assessment on all lands liable to pay revenue to Government, and it is very possible that the rules prescribed by Regulation XXVII. enacted on the same date, for the recovery of arrears of public revenue, were intended to apply exclusively to arrears due on account of lands the assessment upon which should be permanently fixed. But if this was the original intention, it was abandoned in 1806. By Section III. Regulation II. of that year it was declared that Zillah Courts should be "established in the several provinces, the land revenue of which has not been permanently settled, in the same manner as in the districts where the revenue has been permanently settled" by Section IV. it was provided that "Collectors shall enter into written engagements with Zemindars, land-holders and farmers on such terms as may be deemed reasonable by the Board of Revenue," and by Section VI. the provisions of Regulations XXVII. and XXVIII. of 1802, were expressly" extended to all districts in which Zillah Courts may be established." The Provincial Court seem to have overlooked, or to have misunderstood the effect of this enactment, which clearly made arrears of public revenue due on lands not permanently assessed recoverable under the same rules as arrears due on lands, the assessment upon which is permanently fixed, and the only question to be determined, previously to the application of those rules, is whether a defaulter comes within the description of "a proprietor of land" contained in Clause first, Section II. Regulation XXVII. of 1802, without any reference to the principles on which his land is assessed, all that is required to subject him to those rules is that he should be a Zemindar, independent Talookdar, or the actual proprietor of the land, on account of which the arrear is due, and that the revenue assessed upon the estate

should be payable by him immediately to Government, or that he should be a farmer of land holding the farm immediately from Government. On the face of the pleadings in this case it is perfectly clear that the defaulter was an actual proprietor of land paying the revenue assessed on it immediately to Government, and that therefore the arrears due by him were recoverable under the rules prescribed in Regulation XXVII. of 1802.

In respect to Section XXXVIII. Regulation XXVIII. of 1802, to which the Provincial Court refer as pointing out the rules to be observed by Collectors for recovering arrears in Districts under what is termed a Ryotwar Settlement,—it is obvious to remark that the construction of the concluding part of it, which is the only part relevant to the present question, depends exclusively on what is meant by a Collector "making a khas collection on the part of Government;" and it appears to the Court that the meaning is defined by the words "where no settlement may have been made with any proprietor or farmer." Here as in Regulation XXVII. it is very possible that the "settlement," originally intended was the permanent settlement to be formed under the provisions of Regulation XXV. of 1802; and "and a khas collection on the part of Government," might perhaps mean a collection of revenue from lands not permanently assessed, in contradistinction to the collection from lands, the assessment upon which might be settled in perpetuity. But unless the "settlement" here mentioned is now construed without reference to the principles on which it is formed, it is plain that Regulation II. of 1806, would be totally inoperative and nugatory, so far as it respects the application of Regulation XXVII. of 1802, to unsettled Districts, that is, districts the land revenue of which has not been permanently settled; because Zillah Courts had been already established in all settled districts; and the measure of extending the permanent settlement to other districts, as is well known, had been abandoned; so that if the "settlement" mentioned in Section XXXVIII. Regulation XXVIII. of 1802, is construed to mean exclusively "the permanent settlement," there are no districts to which the provisions of Regulation XXVII. of 1802, could possibly apply, except those to which they were before applicable. But it appears to the Court quite clear that in extending the provisions of Regulation XXVII. of 1802, to unsettled districts it was the object of the legislature to establish one uniform pro-

cess for enforcing the payment of arrears due by proprietors of land, whether the public revenue payable thereon should be permanently settled, or whether it should be subject to annual or other temporary adjustments.

Under this construction, which appears to the Court to be the only reasonable and consistent construction that can be given to these enactments, the process to be observed by a Collector for enforcing the payment of arrears is determinable, not by the nature and principles of the assessment on the land, but with reference to the persons by whom the arrears are due. If the defaulter be a Zemindar, independent Talookdar, or actual propietor of the land on account of which the arrear is due, and the revenue is payable by him to the Collector or to his subordinate Officers immediately on account of Government, or if he be a farmer, holding his farm immediately from Government, then the arrear is recoverable under the rules prescribed in Regulation XXVII. of 1802.

But when lands are held in attachment by the Collector or other public Officer on behalf of a proprietor or farmer, or when lands are under the immediate management of the Collector or other public Officer without any settlement with a proprietor or farmer, then, the defaulters standing in the same relation to the Collector as they would stand to the actual proprietor or farmer, supposing the land in the immediate possession and management of a proprietor or farmer under engagements with the Collector, the arrears due by them are recoverable in the mode prescribed in Regulation XXVIII. of 1802. In other words, the arrears recoverable under Regulation XXVII. of 1802, are arrears of public revenue, strictly so called, payable by proprietors or farmers immediately to the Collector or other public Officer of Government, under Settlements permanent or temporary; and the arrears, recoverable under Regulation XXVIII. are 1st, arrears of rent, or the private revenue of proprietors or farmers, payable immediately to them, or for their behoof to the Collector or other public Officer, or to a manager; or, 2dly, arrears of public revenue, payable to the Collector or other public Officer, but not under a settlement with a proprietor or farmer.

The general question involved in this case being thus disposed of, and it being shown that the arrear due by the defendant was recoverable under the provisions of Regulation XXVII. of 1802, the next point for consideration is whether under those provisions the defaulter had

incurred the forfeiture of his estate. And the Court are decidedly of opinion that he had not; because the proceedings of the Collector were *ab initio*, unwarranted, and at variance with the express provisions of the Regulation.

By Section VII. it is expressly declared that proprietors of land shall not be liable to actual imprisonment for arrears of revenue unless, 1st where his entire estate and personal property may be sold, and the proceeds of the sale may not be sufficient to make good the sum due; and 2dly where his entire lands and personal property may be put up to sale, and no person may offer to purchase them; and by Section XXXIV. it is provided that Collectors shall not take into custody nor require the personal attendance of any proprietor of land, with whom a settlement shall have been concluded, except in the cases specified in the Regulation in which they are authorized to issue process against the persons of such proprietors. But in this case the first process issued by the Collector was in effect a process of arrest: it was an order requiring him to pay the amount due, or to appear before the Collector in company with the Peons, for the purpose of being conveyed to the gaol of the Zillah; whereas under the express provisions of the Regulation, before such a process could be legally issued, it was necessary, 1st to demand payment of the arrear in the manner prescribed by Section IV.; 2dly to attach the property of the defaulter, under Section V, to such extent as might be sufficient to made good the arrear, and, if the attachment extended to his lands, to proceed in the manner prescribed by Section X.; and 3dly, to put up the attached lands to sale with reference to the express provisions of Section VII. which, under the provisions contained in Clause fifth, Section XIII. could not be done till after the expiration of the Fuslee year. It is clear then that the process against the defaulter was illegal, and he was not bound to obey it by delivering himself into the custody of the Peons; its illegality vitiates the whole of the subsequent proceedings; and the Collector's application to the Zillah Court for the arrest of the defaulter, under Clause first, and the decree of forfeiture passed by the Zillah Judge under Clause second, Section XIV. were both unwarranted.

It is plain therefore, that the judgment of the Provincial Court in this case, although the grounds of it are not strictly correct, is still substantially consistent with the Regulation; and that a special Appeal therefore is not ad-

missible under the provisions of Clause first, Section IV. Regulation XV. of 1816. It would have been different, if the judgment had rested exclusively on the inapplicability of Regulation XXVII. of 1802, to the province of Malabar, because then a point of general interest and importance, not before decided by the Sudr Court would have been directly involved in it; and the admission of a special appeal would have been necessary for the final determination of it.

17th August, 1829.

I am directed by the Judges of the Court of Sudr Udalut, to transmit for your information and guidance copy of a letter, dated the 18th May, last, addressed by this Court to the Secretary to Government, in the Judicial Department relative to the investiture of the Surplus funds of Zemindaries under attachment by order of the Courts; as also the accompanying copy of one from the Secretary to the Board of Revenue together with the resolution of Government thereon.

The Judges desire that you will furnish the several Courts within your Jurisdiction with a copy of the resolution of Government, relative to the investiture of the surplus funds of estates held under precepts from the Provincial and Zillah Courts, for their information and guidance.

No. 66.

"*To the Acting Secretary to Government in the Judicial Department.*

SIR,

I am directed by the Judges of the Sudr Udalut to request that you will lay before the Right Honourable the Governor in Council the enclosed letter from the Register to the Provincial Court in the Northern Division, respecting the investiture of the surplus funds of the Vassareddy-war estate under attachment, by order of this Court.

With reference to a case No. 6, on the Madura Calendar, enclosed in a late letter from the Second Judge on Circuit in the Southern Division, the Judges observe that the Servants of the late Mr. Peter the principal Collector of Madurâ, who also had charge of the Ramnad Zemin-

dary under attachment by order of this Court, are accused of having embezzled several lacs of rupees in the Madura treasury.

It appears to be the duty of this Court to adopt measures of precaution, for preventing any similar embezzlement in the treasuries of the Government affecting the surplus funds of the estate, under the attachment of Collectors, by their orders. They are accordingly of opinion that the surplus funds of the Vassareddy-war estates, should be invested in the public securities of the Company, in the name of the Register of the Provincial Court for the time being; and that any such securities now standing in the name of the Collectors of Masulipatam or Guntoor, should be transferred to the name of the said Register for the time being, and lodged in the treasury of the Provincial Court.

They are further of opinion that the Collectors in charge of these lands should report to this Court the state of the surplus funds for these Zemindaries up to the close of last fuslee, the amount thereof already invested in Company's paper, and the balance, if any, not so invested.

It is likewise recommended that at the close of each fuslee, the surplus funds of these lands remaining on hand be invested as far as possible in Company's securities, in the name of the Register of the Provincial Court for the time being, and such securities lodged in the treasury of the Provincial Court, and that at the close of each fuslee, the Collectors be required to furnish to this Court a statement, showing the surplus funds, the amount thereof so invested, the further amount ready to be so invested, and the balance if any.

The Judges, under the circumstances before stated, deem it prudent, as above suggested, that the surplus funds should be invested in the name of a public officer different from the Collector, whose duty, under the Regulations, it is to conduct the detailed management of the lands under the orders of the Board of Revenue.

The Judges further submit that the Board of Revenue be requested to furnish this Court, annually, with a statement of the surplus, funds of these lands, as reported to them; to check the accounts furnished by the Collectors to this Court.

As the arrangements proposed can be carried into effect by the revenue authorities only under special orders from the Government, the Judges recommend that the necessary directions for this purpose be issued; and that the Collec

tors be instructed, by a circular order, to consider these instructions applicable to any other lands, which may be hereafter attached by ths Court's orders.

I have the honr to be, &c.,

SUDR UDALUT, REGISTER'S OFFICE, *18th May*, 1829. (Signed) A. D. CAMPBELL, *Register.*

Revenue Department.

No. 302.

To the Chief Secretary to Government.

SIR,

I am directed by the Board of Revenue to acknowledge the receipt of Mr. Orr's letter, under date the 16th ultimo, with copy of a letter from the Sudr Udalut, relative to the investiture of the surplus funds of Zemindaries under attachment by order of that Court, and to report that the Board have passed the necessary orders to the Collectors to give effect to the arragements proposed by the Sudr Udalut.

The Board have directed the Collectors who are, or may be, in charge of estates under orders from the Sudr Udalut to furnish to them with their report on the management of the estates and the detailed accounts thereof, a copy of the annual statement to be furnished to the Sudr Udalut of the surplus funds derived therefrom, and they conceive that the object of the Sudr Udalut will be accomplished by that statement being compared with the detailed accounts in this Office without any fresh statement being made out here and transmitted to them.

The arrangements proposed by the Sudr Udalut having reference only to estates held by the Collectors under orders from that Court, the Board request instructions whether the same arrangements are to be observed with respect to the surplus funds of estates held under precepts from the Provincial and Zillah Courts, and whether Collectors are in future to receive charge of money to be held in deposit on account of those Courts. It appears to the Board to be expedient to establish a uniform system in this respect.

I have the honor to be, &c.,

Revenue Board Office, FORT ST. GEORGE: *13th July*, 1829. (Signed) D. ELIOTT, *Secretary.*

Extract from the Minutes of Consultation, under date the 28th July, 1829.

"The Right Honorable the Governor in Council is of opinion that the object of the Sudr Udalut will be accomplished if the annual statement (shewing the surplus funds of estates in the charge of Collectors under orders from that Court, the amount thereof invested in the public securities of the Company, the further amount ready to be so invested, and the balance, if any) which the Board of Revenue have directed the Collectors to furnish for transmission to the Court be certified by the Secretary of the Board to have been compared with the detailed accounts in their office and found to be correct, and directs that this course be observed in future.

The Right Honorable the Governor in Council also resolves that similar arrangements be observed with respect to the surplus funds of estates held under precepts from the Provincial and Zillah Courts and that Collectors be authorized to receive charge of money to be held in deposit on account of those Courts.

(True copy and Extract,)

(Signed) HENRY CHAMIER,

Secretary to Government."

27th August, 1829.

Read the following letters from the Judge in the Zillah of Canara.

In the first of these letters the Zillah Judge represents that, under Section XVIII. Regulation IV. 1802, it had been the practice of the Provincial Court in the Western Division to refer back to him, and of himself to refer back to the authorities under him several appeals "to be tried and determined de novo." But that he is now induced to think such trial de novo irregular as the Section in question merely provides for the taking fresh evidence in particular cases and the mode of taking it.

The Judges of the Sudr Udalut concur in this interpretation of the law in question there is nothing in their former orders of the 13th September, 1824, to the Provincial Court for the Western Division which authorized the *trial*

of suits de novo, under the law in question, but only "*judgment* de novo" on further evidence to be taken as therein provided.

The Judges accordingly, under Clause second, Section XXV. Regulation XIII. 1816, authorize the return to the parties against whom the same may have been awarded, of the value of any additional stamps used *subsequently* to such irregular reference for trials de novo, but not of those *previously* used, as proposed by the Zillah Judge.

The Zillah Judge further urges the expediency of extending the provisions of Section V. Regulation XV. of 1816, to cases which have been tried *exparte*, especially by the District Moonsiffs, and in his second letter he represents that complaints are frequent of witnesses not having been examined on material points. The Judges are of opinion that, under the analogy of Section XVIII. Regulation IV. 1802, it is competent to a Zillah Judge, on a regular appeal after examination of the record, to refer causes back to a District Moonsiff, with orders to take such further evidence as may be deemed necessary, and to pass a new decree in the case. This may include suits tried *exparte*, in which the absent parties may satisfactorily account for their default. But it will require a new enactment to extend Section V. Regulation XV. 1816, to suits dismissed for default by District Moonsiffs. The Judges will keep the subject in mind, and take a fit opportunity of bringing it to the notice of Government.

Mean time, as the subject discussed in these proceedings is matter of general interest, it is ordered that extract therefrom, with copy of this Court's orders of the 13th September 1824, be circulated for the information and guidance of the four Provincial Courts requiring them to furnish the same by precept for the guidance of the lower tribunals.

"*To the Judges of the Provincial Court of Appeal in the Western Division.*

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut to acknowledge the receipt of your letter, dated 30th April last, transmitting the Abstract Registers of causes decided in the Zillah Courts for the preceding month.

With respect "to the legality of remanding, to be tried de novo by the Officers who originally disposed of

them, causes which have been filed in special appeals," the Judges are of opinion that the Law which directs that after a special appeal has been admitted it shall be investigated under the same rules as are prescribed for the trial and determination of regular appeals, leaves to the appellate Court the power to refer back suits appearing to have been insufficiently investigated to the Court of original jurisdiction with orders to take such further evidence as may be deemed necessary for the just determination of the suit, and proceed to pass judgment de novo, unless that Court shall see cause to confirm its former judgment, in which case it will be sufficient that the Court certify such confirmation.

This has been the practice of the Sudr Court under the construction, put by them upon the provisions of Section XVI. Regulation V. of 1802, which correspond with those of Section XVIII. Regulation IV. of 1802, cited in the minutes of the 2d and 3d Judges under consideration, and the reasons for that construction are those intimated by the 2d Judge in his concluding minute as forming the grounds of the opinion entertained by him, namely, that in order to regularity and consistency of proceeding it is necessary that the essential merits of a case should in the first instance be investigated, and adjudicated upon by the lower Court before it be determined in appeal; "because otherwise it would fall to the appellate authority to decide thereon both originally and in appeal and thus limit the parties to only one judgment on the real merits of a cause."

It is true, that a power is given to Courts of Appellate jurisdiction to receive, on trial of an appeal evidence which had not been taken by the lower Court and give judgment with reference thereto, but it is obvious that in cases wherein the essential merits of a cause come to be elucidated by such additional evidence the Appellate Court virtually exercises original jurisdiction, and does not try in appeal the issue disposed of by the Court below.

It is for this, among other reasons, that the Court refuse to admit evidence tendered by a party on the trial of an appeal which has not been adduced upon the original hearing of the suits, excepting when the party desiring to produce such evidence may prove that it was not within his knowledge or could not be adduced by him pending the trial of the original suit; and even where this ground for the admission of additional evidence may exist the proceeding lies open to the objection of altering the character of the Courts Jurisdiction, in so far as their judgment may

rest on matter not brought before the Court trying the original suit.

I have the honor to be,

GENTLEMEN,

Your most obedient Servant,

(Signed) W. HUDLESTON,

Register

SUDR UDALUT,
REGISTER'S OFFICE,
13*th September*, 1824.

31*st August*, 1829.

Read letter from the Judge in the Zillah of Combaconum requesting copy of this Court's orders of the 4th July, 1817, on the subject of fees to be drawn by Registers.

Previously to deciding on this reference, the Judges remark that, except when this Court directly addresses the lower tribunals, which in certain cases is still requisite, in which case a reply may be forwarded direct, it is desirable that all references both from the Zillah and Assistant Judges, as well as from the Criminal and Auxiliary Courts, and the Magistracy, should invariably be addressed to the Provincial Court. Several late instances having occurred of irregular references direct to this Court, from the lower tribunals, it is resolved, hereafter, to return all such papers as are not submitted through the prescribed channel, and to require the Provincial Court to give notice thereof by precept to the several Civil and Criminal European officers under them.

The request contained in the foregoing letter has led the Judges to re-consider their orders in question issued to the Zillah Court of Bellary, and also orders, on the same subject, issued under date the 16th March, 1820, to the Zillah Court of Rajahmundry.

Regulation XVII. 1808, has been rescinded in toto. Notwithstanding, under Section XV. Regulation XIII. 1816, Registers, according to Section VII. Regulation VII. 1809; Sudr Ameens, according to Section XVI. Regulation VIII. 1816; and District Moonsiffs, under Clause third, Section III. Regulation II. 1828, are entitled to the fees established by law, upon only two description of suits viz., 1st, suits decided on the merits, 2d, suits settled by Razeenamah of the *parties* filed in Court.

This Court, in the first of their orders before alluded to, were inclined to treat a suit withdrawn by the plaintiff, on the ground of an agreement having been entered into by the parties, as one subject to fees being drawn by the Officer from whose file it may be removed. But on further consideration, they, on the 19th January last in circulating new forms for returns of civil suits, explained that when a plaintiff withdraws a suit "it is not to be inferred that he has come to any adjustment with the defendant unless they jointly file a Razeenamah." An *exparte* representation is not enough to infer this, and accordingly it was therein directed that all suits withdrawn should be entered as "dismissed."

With reference to the extraordinary number of suits "withdrawn" before the District Moonsiffs, particularly in the Centre Division, the Judges desire that the Four Provincial Courts, will particularly enforce these orders, and take care that no fees are drawn by the District Moonsiffs, or other authorities, on any such suits, enforcing the order that all such be entered as "dismissed." They will cause the several Zillah Judges strictly to controul the District Moonsiffs in this respect.

10th September 1829.

The Judges desire that, in the numerical statement of suits decided by the District Moonsiffs, all suits not decreed on their merits or settled by Razeenamah filed by *both* parties, be entered by the Moonsiffs and the Courts in the statement as *dismissed*, under which head will be included all suits whether withdrawn, dismissed for default, or any other irregularity: this form of entry the lower Courts were particularly enjoined to observe in the orders of the Sudr Udalut dated the 19th of January last, to which the Judges desire the attention of the several Zillah Judges in the Division may be specially called.

10th September, 1829.

Read letter dated the 22d ultimo, from the Acting Judge in the Zillah of Madura, submitting a statement of the contingent charges of his Court for Fuslee, 1238.

The Court resolve to submit to the Right Honorable the Governor in Council the statement of the Contingent charges incurred in the Zillah Court of Madura, amounting to rupees 18,589, 11, 4, 66, exceeding that incurred in the preceding year rupees 6,343, 8, 7, 70, arising partly from the circumstance of there having been an Acting Judge during the whole of Fuslee 1238, but principally from a charge of rupees 4013, 12, being the "additional fees granted to the District Moonsiffs" or as the Judges conclude the difference between the half anna levied under Clause second, and the full anna paid to the District Moonsiffs under Clause third, Section III. Regulation II. of 1828, and to recommend the said amount for sanction, with exception of the item of rupees 4013, 12, above noted, which requires further explanation.

The Judges observe that this charge appears in the Madura accounts alone. It must be matter of charge in every District, and, with the view of ascertaining how far the amount of the institution fees carried to the account of Government on suits dismissed by the District Moonsiffs affords funds for the disbursement of 1 anna in the rupee, on cases decided on their merits or settled by Razeenamah before them, the Judges resolve to call upon the several Zillah, and Auxiliary Courts to furnish a statement quarterly from the commencement of 1829, shewing—the number of suits filed before the District Moonsiffs,—the amount of the institution fees levied thereon at the rate of half an anna in the rupee on the amount or value in dispute—the number of suits decided on their merits or settled by Razeenamah before them—the amount of the fees paid thereon at the rate of 1 anna in the rupee—and the difference between the total amount of the institution fees levied on suits filed, and the total amount of the fees paid to the District Moonsiffs for suits decreed on their merits or settled by Razeenamah according to the annexed form.*

The statement will be forwarded, hereafter, regularly with the quarterly returns of civil suits, and mean time will be furnished in arrear for the past quarters of the present calendar year.

It appears to the Judges that this item of expenditure ought not to be confounded with the contingent charges of the Courts, but that it ought to be specially sanctioned at the close of each *Calendar* year, and that this expenditure should be checked, by the Courts then submitting

* Form omitted.

through this Court, a summary for the whole year, in the form above alluded to, and that the Zillah Judge of Madura should furnish a statement of this kind for the period to which the charge in his contingent bill extends.

22d October, 1829.

Read letter, under date the 22d July last, from the Northern Provincial Court, with copy of a reference dated the 16th of that month from the Zillah Judge of Nellore.

The Zillah Judge desires to be informed whether the principle laid down, in this Court's proceedings of the 11th May last, may be applied to suits for land, houses, or other productive property, "*i. e.* whether, when land, houses, &c., yielding rent or produce of any kind are adjudged, together with rent or profit, &c., for some past period, up to the date of the plaint, the Court may adjudge the rent, profit, &c., which may be proved to have been received, or which the party in possession is proved to be justly responsible for, up to the date of the decree, and the execution of it."

The Judges are of opinion that, if the income from such property is certain, rent, or profit, proved to have been received from it, may very properly be awarded in such cases; but that, though the property may be of a productive kind, the Courts should be careful not to assume that profit or income has accrued from it when it may be of a precarious nature, unless the actual produce therefrom is established by evidence.

29th October, 1829.

Read letter from the Provincial Court for the Northern Division under date the 10th October, 1829.

Ordered that, with reference to this Courts proceedings of the 10th September last, the four Provincial Courts be informed, that the 2d column of the form, therein alluded to, is to contain the number of suits filed within the quarter only, and not suits previously filed, which then remained undecided, and that an error has found its way into the heading of column 10, in which 5 and 9, should be substituted for 5 and 8.

5th November, 1829.

Read miscellaneous petitions presented by Vakeels Sreenuwasacharry, Applacharry, and Trimul Row.

With reference to the proceedings of this Court under date the 22d October last, the Vakeels Sreenuwasacharry, Applacharry, and Trimul Row respectively delivered in the foregoing petitions on the 29th October last, shewing cause why they should not be dismissed.

The pleaders rest their defence on this ground, that a Vakeel retained by one party is precluded from being employed by the other, only in one and the same suit, but not if the number of the suits on the file is different, though the subject matter of them is substantially the same.

Such a construction of the Regulations is opposed both by the words and the spirit of the law.

The words of Section XXII. Regulation XIV. 1816, refer not to the "same suit," but to the "same cause," thereby declaring that if the "cause" of action, or matter in dispute be the same, in which the Vakeel, has once been retained by one party, he never can be allowed to betray the confidence professionally reposed in him to another, the opponent of that party, either in the same, or in any other suit, regarding the same property, and resting on the same title. To give a different construction to the law would be as contrary to its spirit, as to its letter. There would be an end to all professional confidence, and every description of intrigue and fraud, which it was the object of the Regulation to prevent, would be encouraged by impunity.

The Judges accordingly are of opinion that the three Vakeels, in this instance, are equally guilty, and that exemplary punishment should be inflicted on them.

But the misconduct of the Vakeels Applacharry and Trimul Row is aggravated by other suspicious circumstances, which have come to the knowledge of the Court, some of which are connected with the motion No. 32, of 1828, referred to in this Courts proceedings of the 22d October last, whilst the very long period during which Sreenuwasecharry has been attached to the Court, and his general good conduct for a course of years, induces the Judges to mitigate the punishment, which his misconduct, in this instance, otherwise, would have rendered necessary.

Ordered, accordingly, that the Vakeels Trimul Row and Applacharry, be dismissed, under Clause first, Section X.

Regulation XIV. 1816, and that their sunnuds of appointment be recalled and cancelled, and that notice thereof be given to the several Provincial Courts, for the information of the tribunals under them and of their clients, as provided in Clause third, Section XVIII. Regulation XIV. 1816, the said notice to contain a requisition to their respective clients to nominate new Vakeels in this Court within three months, after its publication in the Zillah Court to which they are amenable.

Ordered further that Sreenuwasacharry be not allowed to practice further in any of the suits connected with the Vassareddy estate, and that with reference to the appeals No. 16, of 1824, and No. 4, of 1826, from the suits No. 27, of 1820, and No. 20, of 1825, on the file of the Northern Provincial Court, due notice thereof be given to Ramanadah Baboo and Atchummah respectively, by the said Provincial Court, and that such notice contain a requisition to the said parties, to nominate new Vakeels in this Court, to represent them in the said suits, within three months after the service of such notice.

Ordered further that all fees, to which, on the decision of the suits respecting the Vassareddy estate, the Vakeels Sreenuwasacharry, Tirmul Row, and Applacharry, may eventually be entitled, be not paid to them, but be forfeited to Government.

Ordered that extract from this Courts proceedings of the 22d October last, respecting the misconduct of the said three Vakeels, and extract from these proceedings, be furnished by precept to the four Provincial Courts, requiring them to circulate the same for the guidance of the tribunals under them, as containing this Courts construction of Regulation XIV. 1816.

"*Extract from the Proceedings of the Sudr Udalut, under date the 22d October,* 1829.

It becomes necessary to investigate the conduct of some of the Vakeels employed by the parties in appeals No. 16, of 1824, No. 4, of 1826, and No. 11, of 1827; and to determine whether they have not rendered themselves liable to dismissal, or to some minor punishment. It must be borne in mind that in all these cases the subject, matter of the dispute was the same, viz., the right of succession to the estate of the late Vassareddy Vencatadry Naidoo, which

is claimed by three separate parties,—Ramanadha Baboo, Atchummah, and Rungamah for her alleged adopted son.

In appeal No. 16, of 1824. Ramanadah Baboo, V. Jugganadha Baboo, Sreenuwasacharry appeared as a Vakeel of the appellant, and presented the motion withdrawing the appeal. On behalf of the same party he presented the petition of summary appeal (No. 1, of 1826,) from the decision of the Provincial Court in original suit, No. 20 of 1825 wherein Atchummah, the senior widow, and as such claiming to be the representative, of Jugganadha Baboo was Plaintiff, and Ramanadha Baboo was defendant. The summary appeal being rejected, and the regular appeal No. 4, of 1826 being instituted, Sreenuwasacharry appeared as Vakeel of Atchummah in direct opposition to the interests of his former client Ramanadha Baboo. It should be observed also that in a previous case—appeal No. 8, of 1818, the Collector of Guntoor, *v.* Jugganadha Baboo—in which Ramanadha Baboo's right of succession to a moiety of the property was collaterally the subject of discussion; Sreenuwasacharry had acted as Vakeel of Jugganadha Baboo; and, under instructions received from his then client, had argued strongly against the right of Ramanadha Baboo, whose cause he subsequently advocated, and has since opposed.

The measure of punishment, to which Sreenuwasacharry is liable, cannot admit of the smallest doubt. The summary appeal No. 1, of 1826, and the regular appeal No. 4, of 1826, are in fact the same cause, both being appeals from the decision of the Provincial Court in original suit number 20, of 1825, and, in direct violation of Section XXII. Regulation XIV. of 1816, he has acted against the party who originally retained him. Considering the part he acted in appeal No. 8, of 1818, his acceptance of a retainer from Ramanadha Baboo in the summary appeal No. 1, 1826, is not easily reconcileable with honest principles of practice; but, putting that transaction out of consideration, it is clear that, by acting on behalf of Atchummah in appeal number 4, of 1826, he must have betrayed the confidence previously reposed in him by Ramanadha Baboo.

In appeal No. 16, of 1824, Trimul Row was the Vakeel of the Respondent Jugganadha Baboo. He subsequently appeared for Rungamah, the second widow of Jugganadha Baboo, and, as such, did several acts connected with that appeal. Immediately afterwards he appeared as the Vakeel of Ramanadha Baboo, in which character he still

continues to act, and is consequently opposed to the title of Jugganadha Baboo to succeed to the entire estate of Vassareddy Vencatadry Naidoo, which, as the Vakeel of Jugganadha Baboo, he had undertaken to support; his acceptance of a retainer from Ramanadha Baboo, after he had been employed by Jugganadha Baboo, was in direct violation of the rule prescribed in Section XXII. Regulation XIV. of 1816.

Applacharry first appeared as the Vakeel of Atchummah, when she brought before this Court her claim to the succession in opposition to the claims of Ramanadha Baboo and Rungamah, whom she charged with having entered into a conspiracy to defraud her of her just rights. It must be remembered that in this petition Atchummah rested her title, not only on a will alleged to have been left in her favor by her husband, but on her right as the widow of Jugganadha Baboo. In appeal No. 11, of 1827, Applacharry appears as the Vakeel of Rungamah, and opposes Atchummah's claim, not only on the ground that Jugganadha Baboo left an adopted son, but on the ground that Atchummah, by her misconduct during the life time of her husband, has forfeited all title to succeed him. He also maintains that the will, which he produced when acting for Atchummah, is a forgery; so that as Vakeel of Rungamah he has argued against every plea which he formerly advanced in favor of Atchummah's claim to the succession. Equally with the other two Vakeels he has violated the rule prescribed in Section XXII. Regulation XIV. of 1816, and betrayed the confidence of his former client.

The object of the rule contained in Section XXII. Regulation XIV. of 1816, is sufficiently obvious; and to expatiate upon the mischievous consequences of allowing such gross violations of it to go unpunished is unnecessary.

Ordered accordingly that access to these proceedings from para 14, to para 20, inclusive be given to the three Vakeels of this Court

Sreenuwasacharry,
Trimul Row,
and
Applacharry,

respectively, and that they be now informed that they will be removed from their offices as pleaders in this Court, unless they shew cause, to the satisfaction of the Judges, next Court day (the 29th Instant) why they should not be dismissed.

5th November, 1829.

Read letter from the Register of the Provincial Court in the Southern Division requesting instructions as to the manner in which stamps on appeals should be calculated.

In the 2d para, are noticed the cases of two appeals decided in this Court; and it is stated, that though in both instances the defendant appealed, yet in one* "the stamp in appeal was calculated in the Decree of the Sudr Udalut upon the amount decreed and not upon the amount originally claimed," whilst in the other† "the value of the stamp for the appeal petition was calculated upon the amount originally sued for and not upon the amount decreed by the Provincial Court."

It appears that in neither of these cases was the stamp in appeal calculated in this Court, though the statement of costs, appended to the Decrees, might justify the inference that they were so, both appeals having in the first instance been admitted in the Provincial Court. The Judges are quite satisfied that, in the last mentioned case, the value of the stamp for the appeal petition ought to have been calculated, as in the first, upon the amount decreed and not upon the amount originally claimed. And it appears by the statement of costs in the Decree in that case, that the Vakeel's fee *was* so calculated.

It has been ruled by the Court of Sudr Dewanny Udalut in Bengal "‡that any interest (and of course any other mesne profit) adjudged or disallowed by the Decree appealed against, should form part of the amount upon which the institution fee is to be calculated in cases of appeal; and consequently should be included in determining the right of Appeal according to the prescribed standard. But that costs of suit, which do not form part of the claim at issue between the parties, and arise from payments to Government, or to the pleaders in the cause, should not be included, either in the calculation of fees, or of the standard for appeals."

The Judges are not aware of any other decision in Bengal bearing more directly upon the question under consideration. It may be observed however that as in an original suit the plaint is to state§ "according to the nearest estimate the exact sum of money or the amount in which the plaintiff may be endamaged," upon which the institu-

* No. 7, of 1823. † No. 10, of 1827. ‡ Harington's Analysis page 127. note.

§ Section III. Regulation III. of 1802.

tion fee is to be calculated,* so, by parity of reasoning, the value of the stamp in an appeal ought of course to be calculated, on the amount in which the appellant may consider himself endamaged by the Decree he appeals against, whether adjudged or disallowed, or in other words, the amount actually at issue in the appeal.

16th November, 1829.

Read letter, dated the 19th ultimo, from the Register to the Provincial Court of Appeal in the Northern Division with copy of one under date the 13th from the Zillah Judge of Nellore, submitting two questions for the consideration of this Court.

The questions are stated by the Zillah Judge as follows: 1st. "When property is attached in execution of a Decree in favor of a party, and is found to be mortgaged or hypothecated in a valid manner to another party, either for a specified term, or indefinitely till the amount due to the latter party be paid; if there be reason to believe that the said property is worth more than will suffice to pay the debt for which it is mortgage or hypothecated; is it competent to a Zillah Court to have it sold and pay off with the proceeds, first the mortgage or hypothecation, and then, as far as the proceeds will go, the amount due under the Decree?"

2d. "When a maintenance at a certain monthly amount is decreed to a party; and it has been necessary several times, to issue process for the amount, on the failure of the proper party to pay it, can the Court take security or attach property, or use other means *before hand*, to ensure the due payments being made?"

The Judges of the Sudr Udalut have no hesitation in answering both these questions in the affirmative; and as regards the first, on which the Zillah Judge expresses himself as having more doubt than with respect to the second, even though the mortgage or hypothecation may be for a specified period and that period unexpired

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7th December, 1829.

I am directed by the Judges of the Court of Sudr Udalut

* Clause third, Section XIV. Regulation XIII. of 1816.

to transmit for your information copy of paras 28 and 29, of the proceedings of this Court, dated the 16th ultimo together with an extract from the minutes of Consultation thereon under date the 27th ultimo, respecting the provision of accommodation at the public expense for district Moonsiff's Cutcherries, and the occasional repair thereof; and to desire that copies of the same may be furnished to the several Tribunals subordinate to you.

"*Extract from the Proceedings of the Sudr Udalut, under date the* 16*th November*, 1829.

The Judges of the Sudr Udalut are decidedly of opinion that it is of the greatest importance that the District Moonsiffs should investigate the suits cognizable by them in a public manner, and that for this purpose they should, as provided in Section XIII. Regulation VI. 1816, be furnished with a "public Cutcherry or Court room;" for the practice of deciding suits in their private residences may give rise to the most serious abuses. It appears that the District Moonsiffs are already very generally provided with accommodation, in buildings, such as Choultries, Muntapums or Pagodas, which, whether the property of the Government, or of individuals, are places of public resort, where this is not the case, it appears desirable that the several Collectors should be instructed, on the application of the Judge or Assistant Judge, to provide suitable accommodation for the Moonsiffs. It is apprehended that this may be done at trifling expense. It will often be in the power of the revenue authorities to point out choultries or the gates of the principal Pagodas which will serve for this purpose, where such are not appropriable, any similar buildings in a dilapidated state may be repaired so as to answer the purpose without erecting a new building, but where this last may be requisite, it can be formed of common materials in the native manner, without any heavy charge.

It is accordingly resolved to submit to the Right Honorable the Governor in Council the foregoing abstract of the communications received from the Provincial Courts, and to recommend that the several Collectors be directed to provide the District Moonsiffs, who are not already provided with accommodation at the public expense, with such accommodation, on the application of the Judge or Assistant Judge;—and that they be also directed to comply with the occasional requisitions of these officers for keeping in

repair the places appropriated for the accommodation of the District Moonsiffs."

"*Extract from the Minutes of Consultation, under date the 27th November*, 1829.

Read the following letter from the Register to the Court of Sudr Udalut.

(Here enter No. 475, 16th November, 1829.)

Resolved that copies of paralis 28 and 29, of the Proceedings of the Sudr Udalut be furnished to the several Collectors, with instructions to provide public accommodation for the Courts of the District Moonsiffs of their respective Collectorates in the manner therein suggested, and to comply with occasional requisitions from the Judges or Assistant Judges for the repair of the buildings so appropriated.

(True Extract)

(Signed) HENRY CHAMIER,

Secretary to Government."

24th December, 1829.

I am directed by the Judges of the Court of Sudr and Foujdaree Udalut to transmit to you the annexed extract from a despatch from the Honorable the Court of Directors in the judicial department, under date the 8th of April last, and, in furtherance of the wishes of the Court of Directors therein expressed, to desire that intimation be given to the Mahomedan Law Officers attached to the several Zillah Courts that a knowledge of the country languages will be considered a strong recommendation to this Court in promoting them to the vacancies which may hereafter occur in the higher Court.

"*Extract from a General Letter from England, dated 8th April*, 1829.

Our attention has been particularly drawn to the following passage of the Report made by the first Judge on the fourth quarterly Sessions at Chittoor for 1825, namely, "Here it becomes a justice due to the conduct and abilities of the Mahomedan Law Officer who sat with the first Judge, at the trials, unequivocally to avow, that owing to his assiduity and attention to the business before the Court,

his *competency to make minutes of the examinations* as they occurred during the trials in Court, *without the reading of the depositions to him in the Persian* as is necessary with other Mahomedan, Law Officers employed in the Courts; his facility in referring to the original proceedings, and correcting mistakes which were scarcely avoidable in the Calendars, his readiness, in delivering his Futwahs, most commonly before the Court had concluded its sittings, are all of them material and most essential advantages possessed by him, such, indeed, as contributed mainly to enable the Court of Circuit to overcome the labour and complicated duty of getting through so numerous a catalogueof cases in a period very little exceeding ten weeks, or such a time as enabled the Court to close the Sessions, with the trial of one hundred and fifty four cases, and afterwards proceed to clear the Zillahs of Bellary and Chingleput, some short time before the half year had expired."

This testimony of the Judge is highly creditable to the Native Officer in question; but we do not extract the passage for the purpose of making that remark. Our object is to advert to the great importance, as here proved by actual experience, of the Law Officers being able to understand the languages in which the Proceedings of the Courts are conducted. We are aware that persons so qualified may not in all instances be found, but we suppose that you are not *now* obliged to have recourse to Bengal for Mahomedan Law Officers, and we do not understand why (especially among Natives of your Presidency) this qualification should be unattainable. In the future selection of Law Officers a knowledge of the Country languages ought to be considered a strong recommendation. It is not only the inconvenience of the Persian Translation which we are desirous to avoid, but we are satisfied that in a great many cases, perhaps in the majority of cases, it is essential to the due administration of Justice, that the Law adviser of the Court should be master of the language in which the Proceedings of the Court are carried on."

24th December, 1829.

Read letter dated the 16th ultimo, from the Judges of the Provincial Court for the Southern Divsion.

The Judges desire to be informed with reference to this Court's proceedings of the 5th ultimo, respecting the man-

ner in which stamps on appeals should be calculated, whether under Clause third, Section V. Regulation I. of 1827, "upon a claim in an original suit for the recovery of a sum not exceeding 1000 rupees the appeal must be to the Provincial Court whatever sum is awarded, or whether in case of a decision not exceeding the sum of 1000, an appeal must be made to the Zillah Court."

The Court are of opinion that in any such case as that put by the Judges of the Southern Provincial Court, the sum actually at issue in the appeal, without any reference to the amount for which the original suit may have been instituted, ought to determine whether the appeal should be made to the Provincial or the Zillah Court. This appears to have been the principle on which it was ruled by the Judges of this Court under date the 12th May, 1807, "that in cases wherein part only of the original claim may be adjudged or disallowed, although the original cause of action may have exceeded 1000 rupees, yet the Decree of the Zillah Court be for an amount or value not exceeding that sum; viz., either adjudging against the party desiring to appeal, money or any description of property to an amount or value not exceeding A. rupees 1000, or disallowing his claim to that amount or value only, the case is not appealable under the prescribed limitations of Section XXI. Regulation II. of 1802. It is true that this Section has since been rescinded, but the Judges are of opinion that the principle of the rule should be maintained.

24*th December*, 1829.

The following questions are submitted for the decision of this Court.

1st Whether a Zillah Judge is competent, or required, to enforce the Decree of a Village Moonsiff.

2dly Whether a Village Moonsiff can delay the execution of his decree, after the expiration of three months.

3dly Whether a person can be confined in the Zillah gaol, in satisfaction of the decree of a Village Moonsiff.

The Judges are of opinion that these queries must all be answered in the negative.

In Regulation IV. 1816, no provision is made for the enforcement of the decree of a Village Moonsiff, by any authority superior to the District Moonsiff. The process prescribed for its execution is exclusively against the property, not against the person, of the defendant; and the

distinction between the process prescribed for the enforcement of the decrees of Village Moonsiffs and that laid down for the execution of the decrees of District Moonsiffs is so marked, that the Judges entertain no doubt of the intention of the legislature on this point. From the wording of Section XXIII. it seems clearly to have been intended by the framers of that law that the period for the execution of a Village Moonsiff's decree should in no case be delayed after the expiration of three months, during which time alone its operation can be suspended.

28th December, 1829.

Read letter from the Secretary to Government in the Judicial Department, on the subject of the half yearly returns of persons confined to the 30th June last, in the civil Department of the several gaols under this Presidency.

The Judges direct that copy of the said letter be transmitted to the four Provincial Courts, for the information and guidance of the several Judges and Assistant Judges under them, and that, in their statements to the 31st instant inclusive, according to the form No. 6, circulated with this Courts orders of the 8th January last, these officers be directed to insert the names of all persons confined at the instance of Collectors under Regulation IX. 1822, as well as of all revenue defaulters, and of all other civil debtors, and also the amount for which each is held responsible, in the proper columns according to the periods they may have been confined.

"*Fort St. George, 27th November*, 1829.

No. 568.

GENTLEMEN, Judicial Department.

I am directed to acknowledge the receipt of your Register's letter of the 19th ultimo, No. 168, submitting a statement of the number of persons in confinement in the several Zillah gaols for arrears of Revenue, on account of embezzlement of public property, and for private debts to the 30th June, 1829. From that statement it would appear that there were no persons confined in the Zillah gaol at Combaconum on account of embezzlement of public property at the period for which that document is prepared; but from the accompanying copy* of a return made to the Board of Revenue for the month of June 1829, it ap-

* Omitted.

pears that there were several persons at that time in confinement in the gaol in question under Regulation IX. 1822.

The Right Honorable the Governor in Council desires that in future the names and particulars of the cases of all persons confined under that Regulation may be entered in the periodical statements of parties imprisoned in the different gaols.

I have the honor to be,

GENTLEMEN,

Your most obedient Servant,

(Signed) HENRY CHAMIER,

Secretary to Government."

To the Judges of the Sudr Udalut.

28th December, 1829.

I am directed by the Judges of the Sudr Udalut, to transmit to you for circulation to the several Zillah and Auxiliary Courts in your Division, the annexed copy of a letter, dated the 27th November last, from the Secretary to Government in the Judicial Department respecting the course of proceeding to be observed by the Courts in cases in which property situated in the Company's territories may belong to parties against whom Decrees may have been passed by the Courts of Native States.

Pursuant to these orders, the Judges are of opinion that, in the event of an application being made to a Zillah, or Auxiliary Court for the enforcement of a decree passed by the proper tribunal of a Native State, an authenticated copy of the decree being of course produced, nothing further will be necessary than to call upon the party against whom it may have been passed, to shew cause why it should not be executed against him; and if no sufficient cause be shewn, to proceed to execution of it, as in the case of one of its own decrees.

"*Fort St. George, 27th November*, 1829.

No. 557.

GENTLEMEN, Judicial Department.

I am directed to acknowledge the receipt of your Register's letters of the 4th October 1828, No. 115, and 12th November 1829, No. 161.

On the occasion of an application from the Provincial Court in the Western Division for orders to the Resident in Travancore and Cochin to effect the sale of a banksall in the Cochin country, the property of a defendant against whom that Court had passed a decree, the Judges were informed, that "the plaintiff, in the case in question, must proceed against the property of the defendant according to the laws of the country in which it is situated;" and the Right Honorable the Governor in Council considers it proper that the same principle should be applied to the cases in which property, situated in the Company's Territories, may belong to parties against whom decrees may have been passed by the Courts of Native States.

I have the honor to be, &c.,

(Signed) HENRY CHAMIER,

Secretary to Government."

To the Judges of the Sudr Udalut.

28th January, 1830.

Read letter from the Provincial Court for the Northern Division, submitting copy of a reference from the Judge in the Zillah of Chicacole, as to the legality of a suitor relinquishing altogether a portion of his claim, in order to render it cognizable by a particular Court, or to reduce the institution fee payable on the suit.

The Provincial Court allude to the decrees of the Sudr Dewanny Udalut in Bengal, as reported in volume 2, page 293, and volume 3d, page 337, of their reported decisions. This Court, under date the 24th March, 1812, in modification of their previous orders of the 1st February, 1811, ruled that a suitor cannot divide his demand, and that a plaint must invariably sue "for payment of the entire sum which the plaintiff considers himself entitled to demand, or expects to recover from the defendant."

The Provincial Court, however, justly remark, that the subdivision of a demand, which alone is contemplated in the decrees of the Bengal Court, and in the decision of this Court above alluded to, is quite a different matter from the entire abandonment of a part of the claim, or the voluntary relinquishment of such portion, in order to bring the action

before a particular Court, lower than that by which the entire claim would be cognizable, or with the view to avoid the increased stamp duty, to which the full claim would be subject; and the Zillah Judge instances "a suit for a balance of accounts, amounting to rupees 32, 10, 11, in which the odd annas and pice are given up, in order to avoid the expense of the additional two rupees, required as the value of stamp in suits exceeding thirty two rupees."

The Judges are of opinion that the strongest objections exist against any unfair or depreciated value being placed on property sued for, and against the subdivision of a claim, with the view of its being brought in portions before a tribunal, which by law is excluded from cognizance of the whole. But, after a party states the full value of the entire claim, they see no objection to his voluntarily relinquishing a certain portion thereof, and suing for the remainder only, in the Court by which that remainder is cognizable, whether with the view to bring justice near his own door, or to diminish the expense of litigation. In either case, the fact ought to be fully set forth in the pleadings; for the voluntary abandonment of the sum relinquished must be the free act of the plaintiff, and should be fully recorded, to prevent the claim for its amount being renewed at a future period.

28*th January*, 1830.

Read letter from the Secretary to Government in the Judicial Department.

Regulation XXXIV. 1802, corresponds in most of its provisions with Regulation XV. 1793, of the Bengal code, whence it is principally taken. But it differs entirely from it, as well as from Regulation XXXIV. 1803, of the Bengal code, in Section VI., which rendered bonds bearing a higher rate than 12 per cent. per annum, irrecoverable in our Courts. The Bengal Regulations render the interest alone irrecoverable, and leave the principal unaffected.

But Section VI. Regulation XXXIV. of 1802, was entirely modified by Section VI. Regulation II. of 1825, which renders the principal, as well as interest at the legal rate, recoverable on such bonds; and this Court, on the 24th January, 1828, decided that this new enactment applies to instruments executed before its promulgation. The question now referred is, whether this applies to instruments of

that description, already adjudicated and rejected under the law, which has thus been modified.

The Judges think that it does. The former original enactment placed a bar which the latter has removed. As previously observed by them, the last enactment is "remedial and should be construed so as to advance the remedy;" and it would be quite contrary to this principle, to permit those who hold such old bonds, and never before prosecuted their claims to a remedy, denied to such as had, in confidence of the justice of their claims, and perhaps in ignorance of the bar originally existing, appealed to the established tribunals for redress.

In either cases, however, as formerly observed by this Court, such claims are subject to the rule of limitation prescribed by Clause fourth, Section XVIII. Regulation II. of 1802.

28th January, 1830.

Read letter from the Provincial Court of appeal for the Southern Division, referring the question whether a special appeal, having been rejected by a competent judicial authority, can be legally admitted by his successor, who takes a different view of the case.

The Judges are of opinion that it would be highly dangerous to permit the successor of any judicial authority, to disturb orders deliberately passed by his predecessor, except where the revision of them may be obviously necessary, to correct an error or omission, or otherwise requisite for the ends of justice. With this view, it seems proper, on the principle of Section VI. Regulation XV. of 1816, that the lower Courts should abstain from disturbing their predecessors orders, except under express permission from this Court, to be obtained as provided in the Regulation above quoted. Without such express permission, no judicial authority can disturb the decisions passed either by themselves or by those who have preceeded them in the same tribunal.

15th February, 1830.

Read letter from the Secretary to Government in the Judicial Department, dated February 5th, forwarding an ex-

tract from the Minutes of Consultation of the same date, directing that hereafter when the evidence of persons residing in foreign European settlements, or in the territories of Native States may be required in any of the Courts of Justice under this Government, the Judges of those Courts shall be authorized to transmit written interrogatories for the examination of such persons, direct to the British representatives in such settlements or territories.

No. 79.

" *Extract from the Minutes of Consultation, under date the 5th February*, 1830.

Read the following letter from the Register to the Court of Sudr Udalut.

(Here enter 28th January, 1830, No. 14.)

Resolved, with reference to the orders of Government under date the 2d December, 1817, that hereafter when the evidence of persons residing in foreign European settlements, or in the territories of Native States may be required in any of the Courts of Justice under this Government, the Judges of those Courts shall be authorized to transmit written interrogatories for the examination of such persons direct to the British representatives in such settlements or territories, who will take the proper measures for obtaining replies to them in such a shape as to be available in a Court of Law.

Ordered, that a copy of this resolution be furnished to the Political and Foreign Department for communication to the British representatives in foreign settlements, and Native States, and to the Court of Sudr Udalut for communication to the Courts in the provinces.

(A true extract,)

(Signed) HENRY CHAMIER,

Secretary to Government."

15*th February*, 1830.

Read letter from the Provincial Court of appeal in the Western Division.

(Here enter No. 854.)

In this communication, two letters from the Zillah Judge

of Canara are submitted; one forwarding a reference from his Assistant, in which he requests instructions as to the proper proceeding respecting costs of suit, when he sends back regular appeals to the *Sudr Ameen Mooftee*, for further inquiry and decision *de novo*, by which proceeding he considers the appeal before himself quashed; the other forwarding a reference from his Register, who, after stating that "conformably to the orders of the Sudr Udalut," he had "sent back to the Sudr Ameens for fresh investigation the appeal suits on" his "file, which were originally tried *ex parte*," adds, that "as these suits can neither be said to be decided upon their merits, nor adjusted by Razeenamah," he wishes for instructions whether himself, and the Sudr Ameens in like cases, are entitled to any remuneration for examining the record in the original suit in such cases.

With regard to the first of these references, the Court are of opinion that, in cases in which it is clearly shewn that the appellants have from ignorance preferred a regular, instead of a summary, appeal, it is but just and proper that the difference between the amount of stamp duty paid by them on the institution of the regular appeal, and that which they would have had to pay for preferring a summary appeal, should be refunded to them.

Such an error could not arise from any improper motive, and the Court agree in opinion with the Zillah Judge that a person is not likely to resort to a regular appeal if he thinks a summary one will avail, and that therefore it would be hard to make an appellant suffer for his ignorance.

The Court accordingly, under the provisions of Clause second, Section XXV. Regulation XIII. of 1816, authorize the Assistant Judge to return to the appellants in suits Nos. 336 of 1824, and 29-30 and 95 of 1825, the difference of the value between the stamps used for preferring regular and summary appeals.

The discussion of these references has led the Court to consider, whether Assistant Judges, under Regulation VII. 1809, and Registers are competent to dispose of *summary* appeals. Section V. Regulation XV. 1816, contemplates the receipt of such appeals by the Zillah Judge alone; but when once received, it is competent to him to refer them for decision by the Assistant Judge, under Clause second, Section II. Regulation VII. 1809, and if they come within a certain description to his Register; under Section II. Regulation II. 1821. The Court are therefore of opinion, that when *regular* appeals are referred by the Zillah Judge to

these authorities, which, it is found, ought to have been made *summarily*, they are competent to dispose of them as if they had been of the latter description.

With regard to the second reference, the Court remark that the Zillah Register seems to have arrived at a very erroneous conclusion, in considering that no suits tried *ex parte* can be said to be decided on their merits. It is the duty of the Court, on the defendant failing to answer the complaint, to proceed to try the cause, and after examining the plaintiff's evidence in support of his claim, to give judgment on the merits of the case as established by that evidence, in the same manner as if the defendant had appeared and answered to the plaint; suits, therefore, upon which *ex parte* decisions are passed, are generally decided upon the merits of the case, for they are usually either so obviously just, as to admit of no defence, or so groundless, as, on the plaintiff's own shewing, to render any defence unnecessary. In this Court's orders of the 31st August last, allusion is made to suits *withdrawn ex parte*, not to suits tried and determined *ex parte* on their merits, and the Court are surprized that the Zillah Judge, and the Provincial Court should have overlooked the error into which the Register has fallen in this respect.

If a Register, on examining the record of a regular appeal, referred for his decision, considers the suit to have been rejected or dismissed on insufficient grounds, without due investigation of the merits, in opposition to the Regulations, he should, in the event of its not being an appeal from a District Moonsiff, treat it as a *summary*, instead of a *regular* appeal; and, obtaining authority for the remission of the difference of stamp duty, as the Assistant Judge has done, should strike the appeal off his file, and return the suit to the Officer, from whose decree the petition of appeal is presented, to be tried and determined a-fresh. The Register in such case will become entitled to his established share of the reduced institution fee, on a summary appeal.

The Court of Sudr Udalut, in their orders of the 27th August, 1829, observed, that under the analogy of Section XVIII. Regulation IV. 1802, it would be competent to a "*Zillah Judge*," "on a regular appeal, after examination of the record, to refer causes back to a *District Moonsiff*, with orders to take such further evidence as may be deemed necessary, and to pass a new decree in the case. This may include cases tried *ex parte*, in which the parties may account satisfactorily for their default." They are of opinion that,

under Clause second, Section XXVI. Regulation VI. 1816, an Assistant Judge, a Register, and a Sudr Ameen may also exercise this authority.

A summary appeal *eo nomine* does not lie from the dismissal, by a District Moonsiff, of a suit without any investigation of its merits, yet, except that there is no refund of the stamp duty, the provisions of the Clause just cited amount in effect to the same thing, whenever the superior Court thinks fit to remand a suit back to the Moonsiff who dismissed it. In that case, the appeal should be struck off the file, because, if the same party should be dissatisfied with the *revised* decree, the grounds of his appeal must be different; and the Register and Sudr Ameen will be entitled to their proportion of the fee paid on the institution of such dismissed appeals; for no part of such fee is repayable to the appellant, as it would have been, if what is technically termed a summary appeal had been admissible from the decree of a District Moonsiff; and the Clause cited above, evidently supposes the appeal to be finally disposed of, in every case, when the suit is remanded back.

11*th March*, 1830.

Read letter from the Secretary to Government in the Judicial Department, dated the 23d ultimo.

With reference to Regulation VII. 1822, the Right Honorable the Governor in Council, has been pleased to direct the Court of Sudr and Foujdaree Udalut to exercise a general controul over all the subordinate Courts, and the four Povincial Courts, a similar controul over the Zillah and Auxiliary Courts in their respective Divisions, in order to prevent the appointment of improper and unfit persons, and the unjust and capricious removal of those employed in the Judicial Department; the Judges of the Court of Sudr and Foujdaree Udalut, accordingly, desire that the same be communicated to the four Provincial Courts for their future guidance, desiring them to furnish the several Zillah and Assistant Judges in their respective Divisions with his information.

8*th April*, 1830.

Read again letter from the Provincial Court of Appeal in the Northern Division, forwarding a reference from the Zillah Court of Nellore, as to the Pleader's fees, in a suit

dismissed, in which each of four defendants delivered in separate answers, through four distinct Vakeels.

The provisions of Section XXX. Regulation XIV. 1816, sufficiently provide for the case of more than one Vakeel being employed by the same party.

But where the parties are more than one, on either side of a suit, and employ different Vakeels, the Regulations do not provide for the case. In such instances, the Court are of opinion that each of the Vakeels employed is entitled to his full fee on the suit.

With regard to the persons who are to pay these fees, the Court are of opinion, that, where the persons, on the same side of a suit, have not conflicting interests, there is no necessity for their employing more than one Vakeel; and that if the judgment go against the opposite party, he is responsible for the fees of one pleader only on the opposite side, the difference being chargeable to the clients who employ more than one Vakeel. But where the parties on the same side of a suit have each conflicting interests in it, the employment of different Vakeels is obviously necessary; and the opposite losing party stands in the same predicament, as if he had instituted separate suits against each of them, and is accordingly liable to pay the full fee due to each of the pleaders employed on the other side.

It being desirable that uniformity of practice should be observed by the Courts in this respect, the Court direct that extract from these proceedings be by precept communicated to the four Provincial Courts, requiring them to circulate the same for the guidance of the lower tribunals, and to observe them in their own decrees.

2d September, 1830.

Read letter dated the 13th ultimo, from the Judges of the Provincial Court of Appeal in the Western Division, enclosing copy of a letter from the Zillah Judge regarding the point, whether the acts of a Magistrate apparently not in opposition to any known Regulation are cognizable by him in the first instance, or by the Circuit Court; with remarks by the Provincial Court.

(Here enter No. 627.)

At the request of the Zillah Judge of Canara, the Provincial Court submit, for the decision of this Court, whether on

the institution of a suit against a Magistrate, under Section XLIII. Regulation IX. 1816, it is the duty of the Court to decide, whether the acts complained of were justifiable or otherwise, or to refer the party in the first instance to the superior Criminal Tribunals, whom the Zillah Judge considers to be the only authority, "competent to revise and controul Magisterial proceedings."

Although it is competent to a person complaining against a Magistrate or a Collector, to address himself to the Superior Criminal Courts, or to the Board of Revenue or Government, respectively, for redress, the law wisely gives him also the right to file a civil suit in the Udalut of the Zillah, for any injury sustained by an official act of the Magistrate or Collector.

If either of these officers, when prosecuted, consider that the redress demanded should be granted, or that the suit should be defended at the public charge, Regulation I. 1823, contains the rules on which they are to act.

But whether the rules therein laid down are acted on, or not, if the suit proceeds, it is clearly the duty of the Court to decide, whether the acts complained of were legal and justifiable, without reference to the opinions or judgment of the superior criminal, revenue, or executive authorities, whose sentiments are not to guide the Civil Judicial Tribunals, bound by the legislative enactments of the Government alone as interpreted by this Court.

2*d September*, 1830.

Read the following letters from the Provincial Court for the Southern Division.

(Here enter No. 540, and 542.)

In the last of these communications, the Provincial Court, in the Southern Division, at the request of the Judge in the Zillah of Salem, has submitted to this Court the question, whether the Curnum of a village, the land revenue of which has been permanently fixed, under Regulation XXV. 1802, can be removed from office, except by order of a Civil Court of Judicature, on a regular suit instituted for the purpose. In the previous letter, they forwarded a communication from the Judge of Salem, detailing his reasons for a modification of such part of the Regulation above-mentioned as regards Curnums in settled districts.

With reference to the provisions contained in Section XI. Regulation XXV., and in Section V. and VII., Regulation XXIX. 1802, the Court of Sudr Udalut concur in opinion with the Provincial Court in the Southern Division, that a Curnum of a village, of which the revenue has been settled permanently, cannot be removed except by a decree of a Civil Court, on a regular suit to be instituted for the purpose. It is true, that the first of the Sections, above referred to, allude to the "trial and punishment" of the Curnum, and to the "sentence" of the Court of Judicature, terms, which, if they stood alone, might lead to the inference, that a criminal, and not a civil, tribunal is intended; but the enactment goes on to declare expressly, that the proceeding shall be by a "suit in the Udalut of the Zillah," and Section VII. Regulation XXIX., in cases of incapacity, also declares, that the proof must be "before the Judge of the Zillah."

The Court of Sudr Udalut see no reason to modify the existing law in this respect;—and in submitting to the Government, under date the 28th January last, draft of a regulation, by which hereditary village or other officers in the revenue and police departments were placed under Collectors, and the incumbents were declared liable to removal by them, subject to the orders of the Board of Revenue or of Government, the office of Curnum in permanently settled districts was expressly exempted from this rule.

9th September, 1830.

Read letter from the Provincial Court of appeal in the Southern Division.

In the foregoing letter the Provincial Court submit, for the decision of this Court, the following question.

"In case the total amount of a bond exceeds the sum cognizable by a Court, can a suit be brought in that Court for the recovery of the 1st instalment of the bond, such instalment being the only one then due, and the amount thereof being adjudicable by the Court."?

In para 3 of their Circular Orders of the 28th January, 1830, para 4 of their letter to the Northern Provincial Court of the 14th December, 1824, and their letter to the Acting Judge of Vizagapatam of the 12th April, 1819, this Court recorded their opinion against "the sub-division of a claim, with the view of its being brought in portions before a tribunal, which by law is excluded from the cognizance of

the whole." They shewed the incongruity of a Court deciding on an instalment of a bond, or a portion of a debt, virtually involving the validity of the aggregate recoverable, from cognizance of which they were expressly excluded; and they laid it down as a general rule, that, though the original transaction between the parties may have exceeded in amount that cognizable by the Court, yet if, by liquidation of a part, the *remainder recoverable* does not exceed that cognizable by the Court, it may be adjudicated by it: but that when the aggregate of the instalments on a bond, or of the separate portions of a debt still recoverable exceeds that to which the Court's jurisdiction is limited, "each instalment or portion of the claim can only be awarded in the superior Court; because, in the adjudication of the right to the portion claimed on such instrument, the right to the whole debt," still recoverable, "must necessarily be first determined."

For these reasons the Court are of opinion that the question submitted by the Provincial Court in the Southern Division is to be answered in the negative.

9th September, 1830.

I am directed by the Judges of the Court of Sudr Udalut to transmit, for your information and guidance, the accompanying copy of a letter, dated the 27th ultimo, from the Secretary to Government in the Judicial Department, and of its enclosure, being an extract from a despatch from the Honorable the Court of Directors, dated the 10th of February, 1830.

You will be pleased to instruct the several Magistrates, and Zillah and Assistant Judges within your Division, in future to write separate letters on separate subjects, and to observe, as far as circumstances will permit, the greatest brevity in their official correspondence; you will point out to them, that those communications will be considered the most valuable which compress useful matter within the shortest compass.

You will also direct those Officers in their correspondence with each other, or with yourselves, or this Court, invariably to annex to their letters a paper containing a short abstract of their contents.

The Judges also desire that in future all letters to my address be likewise accompanied by an abstract of their contents, and that you will in other respects be guided by these instructions.

"*Fort St. George*, 27*th August*, 1830.

No. 732.

Revenue Department.

GENTLEMEN,

I am directed by the Right Honorable the Governor in Council, to transmit, for your information and guidance, and for that of your subordinate functionaries, the accompanying extract from a despatch from the Court of Directors, dated 10th February, 1830. The Right Honorable the Governor in Council desires, that hereafter every letter from your Court to the Government may have annexed to it a paper containing a short abstract of its contents, as directed by the Honorable Court.

I have the honor to be, &c.,

(Signed) HENRY CHAMIER,

Secretary to Government."

To the Judges of the Sudr and Foujdaree Udalut.

"*Extract from a Despatch from the Honorable the Court of Directors, dated* 10*th February*, 1830.

"The great length of many of your general letters and the number of subjects which they embrace, tend materially to retard our correspondence. To obviate this cause of delay, you are directed to instruct all your subordinate functionaries, in the several departments, Civil and Military, as well in their correspondence with each other, as with their respective Governments, to write separate letters, upon separate subjects, and on a paper annexed to each letter, to make a short abstract of its contents. This division of subjects may not be practicable to an equal extent in every department, and in all cases, but it is desirable that it should be acted upon as far as circumstances will permit. The practice of making abstracts, besides facilitating references, will lead, we hope, to a condensation of the correspondence, which is often most unnecessarily expanded. It should be understood throughout our service, that the letters which contain the most useful information and pertinent suggestions or instructions, within the shortest compass, are most valuable, and will be held by the superior Authorities in highest estimation."

(A true extract,)

(Signed) HENRY CHAMIER,

Secretary to Government."

30th September, 1830.

Read letter, from the Provincial Court in the Southern Division, under date the 15th instant, submitting whether it is necessary that letters of every description should have abstracts annexed to them as directed in this Court's orders of the 9th instant.

The Judges of the Sudr and Foujdaree Udalut, are of opinion that it is expedient that *all* letters addressed to them should have the abstracts annexed, but consider it more convenient that these abstracts should be written upon the backs of the letters themselves, which should be folded in the manner of the extract from these proceedings, than on a detached paper, as before directed. The Provincial Courts may issue any other orders, for the conduct of correspondence with themselves, which they may find best calculated to promote the public service.

25th October, 1830.

I am directed by the Judges of the Sudr and Foujdaree Udalut, to inform you that, amongst the changes in the Judicial Department, at present in contemplation, it is proposed that the Hindoo and Mussulman Law Officers, attached to the Provincial, Zillah, and subordinate Courts, should all be employed as Sudr Ameens.

In their capacity of Sudr Ameens, it is intended that the Law Officers, both Mahomedan and Hindoo, should not only possess the power of deciding civil suits, of a value higher than those at present cognizable by Sudr Ameens; but also possess very extensive criminal jurisdiction. It is accordingly considered deirable, with the view of qualifying them for the duties about to be entrusted to them, that, at all such times as they may have leisure from other avocations, they should give their attendance, at the nearest European criminal tribunal, in order that they may acquire the knowledge requisite for conducting criminal proceedings, in the manner at present observed by the Criminal Courts.

Many of the Mahomedan Law Officers may be expected to be already some-what conversant with criminal business; it will therefore be requisite to impress on the Hindoo Law Officers, in particular, the necessity for rendering themselves competent to perform criminal, as well as civil business, as they cannot expect to be entrusted with the proposed new duties until they are fit to execute them.

18th December, 1830.

With reference to my letter, under date the 28th December, 1829, transmitting the form No. 6,* for the preparation of the half-yearly statement, shewing the number of persons in confinement for debt, &c., in the several gaols within your Division, I am directed by the Judges of the Court of Sudr Udalut to transmit to you, a revised form, No. 6,* according to which you will direct the several Zillah and Assistant Judges in your Division to prepare the statement for the last half of the present year.

27th December, 1830.

I am directed by the Judges of the Sudr Udalut to inform you, for communication to the Zillah Judges, that from the 1st of January next, the officers employed as Zillah Pundits, and Zillah Mooftees, are to draw severally a salary of 150 rupees per mensem; with the exceptions of Moulavee, Nazer Allee, Mooftee in the Zillah of Chingleput, and and of Moulavee, Mokurrum Allee, Mooftee of Chicacole, who will retain their former monthly salaries of 210 rupees each, as personal allowances, to cease on their vacating their Offices.

27th December, 1830.

I am directed by the Judges of the Sudr Udalut, to inform you, for communication to the several Zillah and Auxiliary Courts, that the Right Honorable the Governor in Council was pleased, under date the 17th instant, to resolve, with reference to the orders of Government of 28th July, 1829, (regarding the accounts to be furnished to the Courts of the surplus funds of the estates, under the management of the Collectors, by order of such Courts,) that, whenever any estate village &c., may be placed under the management of a Collector, by order, either of this Court, or by that of the Provincial, Zillah, or Auxiliary Courts, a communication of the circumstance is to be made to the Board of Revenue through this Court, and that the accounts, heretofore furnished by the Revenue Board direct to the different Courts in the Provinces, are to be distributed through the medium of this Court.

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* Form omitted.

23*d February*, 1831.

Read letter, dated 6th December last, from the Provincial Court of Appeal in the Northern Division.

In the foregoing letter it is stated, that great difference of opinion and practice appear to prevail upon the two following points, on which the decision of the Court of Sudr Udalut is desired, namely:

1st. "When property is attached for sale in execution of any process of Court, and claims to it are put in, on mortgage, or any other ground, is it, or is not, the proper mode of proceeding for the Court that issued the process, to make, or cause to be made, a summary inquiry by means of documents and witnesses, pass a summary decision, and release, or sell, the property accordingly?

2d. If the proceeding above described be the proper one, is an appeal from such summary decision admissible by the proper superior Court, in the same manner as from any other interlocutory order?"

The Court of Sudr Udalut have no hesitation in determining both the questions above stated, in the affirmative. With respect to the second question, the Court are and have always been clearly of opinion, that, under the general regulations, an appeal lies to the superior Court, from all interlocutory orders of Court, excepting where such appeal may be expressly, or virtually, prohibited by an enactment of the legislature.

The Courts affirmation of the 1st question rests upon the grounds stated by the Provincial Court, namely, "that the proceeding above described is the proper one; because every Court of justice is responsible for the process which it issues, and if it has any reason to suppose that property attached, under its warrant, is improperly attached, as it must be if any person has a lawful claim upon it, prior to that of the party in whose behalf it is attached, the Court is bound, before it proceeds further, to make such inquiry, as is necessary, and within its power, to determine that point, and to be guided by the result of that inquiry. The objection which has been urged to this course, namely, that Courts must not decide on rights of property by interlocutory order, is inapplicable; because such summary inquiry and decision does not preclude any party concerned from bringing an original regular suit for the same cause of action; it is made, not as between the parties concerned, but merely for the security of the Court itself against an erroneous application of its process."

The difference alleged to prevail in practice regarding the mode of proceeding in the cases here contemplated, induces the Court of Sudr Udalut to direct, that extract from these proceedings be transmitted to the four Provincial Courts of appeal to be by them communicated to the several Zillah Courts, and the Courts subordinate to them for their information and guidance respectively.

28th February, 1831.

Read letter, from the Provincial Court in the Northern Division, dated the 21st ultimo, requesting instructions as to whether a loan acknowledgment, for the sum of Calcutta Sicca Rupees, 19,000 on account of surplus collections, from the estate of Cotam (placed under attachment, by the orders of this Court) made out in the name of the Register of the Provincial Court, by the Collector, is correct ; or whether the said acknowledgment should not stand in the name of the Register of the Sudr Udalut.

Previous to the 18th May, 1829, it appears, that the surplus funds of estates under the attachment of Collectors were left in their treasuries. On the above date this Court suggested to Government, that the surplus funds of the Vassareddywar estates should be invested in the public securities of the company in the name of the Register of the Provincial Court for the time being, and that any such securities then standing in the names of the Collectors of Masulipatam and Guntoor, should be transferred to the name of the said Register, for the time being, and lodged in the treasury of the Provincial Court, the Court at the same time applied to Government to issue the necessary directions for the purpose, and requested that the Collectors might be instructed, by a Circular order, to consider these instructions, applicable to any other lands which might be hereafter attached by this Court's orders, stating that the arrangements proposed could be carried into effect by the Revenue authorities only, under special orders from the Government.

On the 17th August 1829, copy of the reply of Government to the above letter was circulated to the four Provincial Courts, in consequence of which, the said bonds were to be prepared in the names of the Registers of the Provincial Courts, their executors and administrators. On the 29th October, of the same year, the Court submitted to Govern-

ment that those bonds, if vested in this form, might be held, to be transferrible, after the death of those Officers, only on the application of the administrators to their personal estates; and they subsequently suggested, that the same should stand in the names of the Registers to the Provincial Courts, *for the time being*, payable to that Officer, *his successors in office, or his, or their order*, and not to their "executors or administrators," and requested that this suggession might be adopted generally, as regarded Company's Securities, at the disposal of the Courts.

On the 30th July last, the resolution of Government to have certain original Bonds sent to Bengal to be cancelled and fresh Bonds to be issued for them; and to recommend to the Supreme Government the general adoption of the suggestion regarding the investiture of these securities was intimated to this Court, who, on the 20th September, forwarded the said Bonds to Government for the above purpose, and proposed, that, as the Bonds in question belonged to the Vassareddy suit then pending in appeal before this Court, the new Bonds might be made payable to the Register to the Sudr Udalut at Fort St. George, for the time being, his successors in office, or to his, or their order.

Although no reply has as yet been received from the Supreme Government sanctioning the general adoption of the last suggestion of this Court, little doubt can exist of its expediency, and of their eventual sanction: and, as late as the 29th December last, this Court requested the Accountant-General to instruct the Collectors of Masulipatam and Guntoor, to transmit annually by a bill, in favor of the Register of this Court, all the surplus funds of the Vassareddy estates under attachment by this Court's orders, and that they should be vested in Government Securities at this place, in direct communication with the Accountant-General.

Although the above refers only to the Collectors of Guntoor and Masulipatam, it appears to the Court highly desirable that the same, or a similar mode of proceeding, should be generally adhered to by the Provincial Courts, and by the several Collectors.

Ordered, therefore, that extract of these proceedings be forwarded to the Accountant General, requesting that he do issue early instructions to the several Collectors, to the effect that they transmit, whenever the surplus collections may have been made, such surplus funds of the different estates in their Districts, under attachment by this Court's

orders, that they may be invested in Government Securities at this place, in direct communication with the Accountant-General, and that all such Securities be prepared in the name of the Register of the Court of the Sudr Udalut at Fort St. George, for the time being, his successors in office, or to his, or their order.

15th March, 1831.

Instances having lately occurred of the transmission to of this office of petitions, and other papers from the subordinate Courts in the native languages, unaccompanied by translations, as required by the standing orders of the Court of Sudr and Foujdaree Udalut, I am directed by the Judges to desire, that you will call the particular attention of the Judges and Magistrates within your jurisdiction to this subject, and enjoin them on no account to omit to send translations of all documents in the native languages, which they may forward to this office.

7th May, 1831.

Read letter, dated the 24th October, 1828, from the Provincial Court in the Centre Division, submitting the question, "whether after suits have been dismissed for default, without an investigation of their merits, the remedy of the party aggrieved is only by appeal under Clause second, Section XXVI. Regulation VI. and Section V. Regulation XV. of 1816, or whether they have the option, besides such appeal, of instituting the suit *de novo* in the same Court in which it had been dismissed for default."

In the extract of the proceedings of the Provincial Court of the above date, the principle of the provisions, contained in Section IX. and X. Regulation II. of 1802, is referred to, in support of the opinion of the Provincial Court, "that no suit dismissed for default in any Court, can again be received or instituted there *de novo*, except under orders from a higher tribunal," but the Court of Sudr Udalut are not of opinion that these provisions are at all applicable to the question at issue.

It appears to the Court of Sudr Udalut, that the summary appeal from dismissals for default is intended to pro-

vide against persons being improperly taxed with costs; and that a plaintiff, whose suit is dismissed for default, without investigation of the merits, may, on the principle explained in pages 296 and 376, Blackstone's Commentaries, vol. 3d, institute the suit de novo.

The question being one of general interest, the Court resolve to transmit a copy of these proceedings to the four Provincial Courts of Appeal for the information and guidance of the judicatories subordinate to them respectively.

11*th May*, 1831.

I am directed by the Judges of the Sudr and Foujdaree Udalut to transmit to you the accompanying copy of an Extract from the Minutes of Consultation, under date the 6th instant, and to desire that you will communicate the same to the Judges and Magistrates within your jurisdiction.

Foreign Department.

"*Extract from the Minutes of Consultation, under date the 6th May*, 1831.

Resolved with reference to the orders of Government in the Judicial Department, dated 4th July, 1828, that the Court of Sudr and Foujdaree Udalut be requested to notify to the Courts in the Provinces that Monsieur le Juge de Paix Lieutenant de Police at Pondicherry, has received orders from the French Government, to send to them, at their requisition, native inhabitants of the French territory who may be required to give evidence in the British Courts of Justice. On such occasions the Judges and Magistrates will address themselves direct to the Officer of the French Government above indicated. In cases where any difficulty may arise after communication with the Juge de Paix, Lieutenant de Police, the Judges will refer themselves to the special Agent for Foreign Settlements.

(A true extract,)

(Signed) HENRY CHAMIER,

Acting Chief Secretary."

20*th May*, 1831.

Read letter, dated the 20th ultimo, from the 1st Judge

of the Provincial Court of Appeal in the Northern Division, submitting the copy of a letter, dated 9th ultimo, from the Judge in the Zillah of Chicacole, recommending "that all Sudr Ameens and Moonsiff's should be required to send, with the records of the suits before them, the original draft in their own hand writing of their decrees:" and that this rule should be observed by those, who may not be acquainted with the language of the district, of whose decrees a translation should be furnished to the parties.

The Court of Sudr Udalut being of opinion, that the adoption of the rule, proposed by the Zillah Judge, will operate as a salutary check upon the proceedings of the Sudr Ameens and District Moonsiffs, direct that the four Provincial Courts of Appeal do issue the necessary instructions for its observance.

4th July, 1831.

A question having been referred for the decision of the Court of Sudr Udalut respecting the disposal of suits of the description specified in Clause first, Section II. Regulation IV. of 1831, which are ready for decision, but in which decrees had not been passed at the period of the promulgation of that Regulation, I am directed to apprize you, for the information and guidance of your own Court and of those subordinate to you, that, according to the construction given to this enactment by the Judges of the Sudr Udalut, the provision contained in Section IV. of the Regulation bars any adjudication upon such suits, and that, on their being struck off the file, application should be made, under the provisions of Clause second, Section XXV. Regulation XIII. of 1816, for the return of the amount of stamp duty substituted for the institution fee.

26*th August*, 1831.

Under the sanction of the Right Honorable the Governor in Council, the Judges of the Court of Sudr Udalut, direct that you will instruct the judicial authorities subordinate to you to extend to the parties to suits, which may be struck off the file under the provisions of Regulation IV. of 1831, the benefit of the provision contained in Clause

second, Section III. Regulation VI. of 1831, respecting the parties to suits, which may be struck off the file under that Regulation.

29th August, 1831.

The Court of Sudr Udalut, having had under consideration the replies furnished by the several judicial tribunals, to the queries circulated, under date the 23d October, 1827, on the subject of Security in cases of Appeal, observe that a diversity of opinion prevails in respect to what should be considered the "annual produce" of land, as defined in Section III. Regulation III. of 1802; and that in some Courts it is the practice, on appeal in suits for the recovery of houses, to require security for one year's produce thereof, instead of security for the computed value, as prescribed by Clause second, Section XI. Regulation XII. of 1809.

The Court of Sudr Udalut are clearly of opinion, that in suits for land the security should be taken on appeal for the estimated value of one year's produce of the land decreed, exclusive of the expenses of cultivation, but inclusive of the Circar's share, and they therefore direct that this mode of calculation be observed in future.

And in respect to suits for houses or other immovable property, not being land, the Court of Sudr Udalut direct that, on appeal, security be taken for the computed value of the property decreed, agreeably to the provisions of Clauses second, and third, Section XI. Regulation XII. of 1809.

9th September, 1831.

The Judges of the Court of Sudr Udalut considering it desirable that they should possess information as to the number of applications for the admission of special appeals pending in, the number of such petitions presented to, and those disposed of by, the several judicial authorities under this Presidency, during the period comprised by the Abstract Registers of suits disposed of, &c., I am desired to request you will call upon the several Zillah and Assistant Judges within your Division, to furnish quarterly, with their civil reports, a statement according to the form subjoined, to be appended to the General Abstract.

The Judges desire that a similar statement be appended to the quarterly reports furnished by your own Court.

Abstract of Applications for Special Appeal.

Number depending on 1st July, 1831.		6
Number presented during the last quarter.....		5
		11
Disposed of During the Quarter.		
Admitted.....	3	
Rejected.....	6	9
Depending on the 1st October.....		2

10*th September*, 1831.

I am directed by the Judges of the Sudr and Foujdaree Udalut, to transmit for your information and guidance, an extract from a general letter from the Honorable the Court of Directors, in the Political Department, dated the 14th January, 1829, and a copy of the resolution passed thereon, by the Right Honorable the Governor in Council, under date the 2d instant.

You will communicate these papers to the Officers subordinate to you for their respective information and future guidance.

"*Extract from a General Letter, from the Honorable the Court of Directors, in the Political Department, dated* 14*th January*, 1829.

"Part of para 67. Since the property of a person who executes a Security Bond, cannot be made available for the discharge of the Bond, unless it be situated in our own territories, he should, in making affidavit that he possesses property sufficient for the purpose, be also required to declare that this property is within the jurisdiction of your Courts.

Extract from the Minutes of Consultation, 2*d September*, 1831.

Ordered that an Extract from parah 67, be sent to the Sudr Udalut and that they be desired to instruct the lower

Courts of this Presidency to conform to the orders of the Court in respect to the Affidavit to be taken by individuals offering to sign security bonds."

(True extracts,)

(Signed) HENRY CHAMIER,

Chief Secretary."

19*th October*, 1831.

Read petition, presented on the 4th instant, by Maudiga Chinna Yelloogadoo and four others.

It appears, that the petitioners were sued in the Court of the District Moonsiff of Tondimurry, by M. Nagadoo, and three others, "for the recovery of the Madigy Meerassee, of the village of Tukelapully, together with the Mauniums attached thereto, and rupees 42, profits enjoyed by them."

The District Moonsiff gave judgment in favor of the plaintiffs for the above claim, and on appeal the decree was affirmed by the Zillah Court of Bellary.

The petitioners made an application to the Provincial Court for the admission of a special appeal, which was granted, under date the 26th August, 1829.

And on the 9th ultimo, the Provincial Court directed that the appeal, which was numbered 29, of 1829, should be struck off the file on the ground, that "it is not competent to them, under the provisions of Clause first, Section III. Regulation VI. of 1831, to entertain the suit."

The petitioners represent, that by the decisions of the lower Courts, they are deprived of the Meerassee, and as dismissal of the special appeal will otherwise have the effect of perpetuating that deprivation, they pray that the Court of Sudr Udalut will order the whole of the proceedings to be quashed *ab initio*, in order that the parties may be placed in the same situation as before the institution of the original suit.

The Court of Sudr Udalut are of opinion, that the petitioners would be entitled to the order for which they apply, if the special appeal were properly dismissable under the provisions of Clause first, Section III. Regulation VI. of 1831.

But to the Court of Sudr Udalut it appears perfectly clear, that appeals do not fall within the scope of the provisions of this Regulation.

The Clause cited by the Provincial Court in their proceedings of the 9th ultimo, directs that all "suits" respecting the offices and emoluments, referred to, shall be struck off the file; and Clause first, Section IV. of the Regulation provides, that all claims of this description, "which have arisen, and have not been determined by the ordinary Courts of Judicature," shall be adjudicable by the Collector of the District.

In the case before the Court, the claim has been determined by the ordinary Courts, in so far as it has been adjudicated by the District Moonsiff and the Zillah Judge, and it is therefore not one of those declared cognizable by the Collector of the District.

The Court of Sudr Udalut consider the object of the provisions of Section III. of the Regulation to be the prevention of any futher decisions by the ordinary Courts on the questions therein described; but where a suit has been determined, it must be allowed to go through the prescribed course of appeals.

For these reasons the Court resolve to overrule the order passed by the Provincial Court in this case, and direct that the Appeal No. 29, of 1829, be replaced on the file of the Provincial Court, and tried and determined on its merits.

The Court of Sudr Udalut deem it proper that their proceedings on the above petition should be communicated through the several Provincial Courts to the Courts subordinate to them, respectively, as containing their construction of Section III. Regulation VI. of 1831.

27*th October*, 1831.

A question having arisen as to the means of giving effect to the provisions of Regulation VI. of 1831, that the parties in the suits therein described which may be struck off the file of the several Courts, shall receive back the amount of all charges incurred by them respectively in the prosecution of such suits, I am directed to state, for the information of your Court, and of those subordinate to you, that the Judges of the Sudr Udalut are of opinion, that, in every case struck off the file of a Court under the above regulation, the presiding Officer of the Court should cause a statement to be prepared of the costs incurred by the parties for stamps and for batta to Peons, and also of the portion of fees allowed to the Vakeels, and should enter the amounts in the monthly indent of

the Court to be paid, together with the portion of the Vakeel's fees remaining unappropriated, to the parties respectively, the presiding Officers of the Courts will of course be guided in determining the portions of fees to be allowed to the Vakeels, by the rules prescribed by Clause first, Section XXXI. Regulation XIV. of 1816.

2d November, 1831.

Read letter from Mr. Casamajor, Acting Judge of the Provincial Court of Appeal for the Northern Division, dated the 21st October, 1831.

The Acting Judge submits the question whether under Section II. Regulation VI. of 1828, the period between delivering stamp paper for a copy of a decree, and receiving the copy, or the copy being tendered, is to be allowed besides the limited period for appealing, or whether the limited period is absolute.

The Court of Sudr Udalut are of opinion that the period limited for appealing is absolute, Section III. Regulation VI. of 1828, is positive; and it virtually rescinds all of Clause ten, Section VIII. Regulation XV. of 1816, that is not expressly rescinded by Section II.; otherwise the provision, that the date on which the period allowed for appealing will expire shall be proclaimed in open Court on the same day, that the translation of the decree is signed and certified, could not be carried into effect for it is impossible to fix the date, if any allowance is to be made for the time occupied in making a copy of the decree.

23d November, 1831.

Read letter from Mr. Casamajor Acting Judge of the Provincial Court in the Northern Division, and the enclosed copy of a letter from the Assistant Judge at Masulipatam, respecting the inconveniences attending the present mode of procuring the evidence of witnesses residing without the jurisdiction of Zillah Courts by interrogatories.

Although Section VII. Regulation III. of 1802, which contains the rule for obtaining answers to interrogatories sent by a Zillah Court does not provide for any cross examination of witnesses upon the answers given by them to

interrogatories, it does not restrict the examining Officer from putting such further questions, as may appear to him to be necessary to elicit the truth, or to draw forth full explanations upon the points on which the answers have not been sufficiently explicit, or have been given in a prevaricating manner; and it appears to the Court of Sudr Udalut, that, unless the examining Officer does put such questions, the evidence obtained from the witnesses must generally be unsatisfactory. Considering it to be necessary to give full effect to the provisions for enabling the Courts, to obtain the evidence of witnesses residing out of their jurisdiction, that the Officers to whom interrogatories are sent should be authorized and required to cross-examine the witnesses, the Court resolve to issue orders accordingly. They resolve also to direct, agreeably to the suggestion of the Acting Judge, that when interrogatories are sent to be put to witnesses named by the parties in a cause, there be sent along with them a copy of the points given to the parties to prove. These rules are to be applicable to the Courts of the District Moonsiffs as well as the Superior Courts.

30th November, 1831.

Read letter from Mr. Casamajor, Acting Judge of the Provincial Court, in the Northern Divison, dated the 21st instant.

The Acting Judge submits the question, whether, when a Court adjourns, pursuant to permission granted by the Sudr Udalut, the whole period of the adjournment is to be deducted in calculating the different periods granted for appealing from decrees, or orders, or doing any other act for which a fixed period has been assigned by competent authority; or whether only the time is to be allowed till the re-opening of the Court.

The Court of Sudr Udalut are of opinion, that, only the time till the re-opening of the Court ought to be allowed. When the period for appealing expires during the adjournment of a Court, it is incumbent on the party wishing to appeal to present his petition on the day on which it is re-opened; and if he fails, his appeal should not be admitted, afterwards without good and sufficient cause being shewn for the default.

The Court resolve to direct that this rule be observed, generally, with respect to appeals from decrees and orders,

and all acts required to be done within a fixed period, which may expire during the adjournment of a Court.

13th January, 1832.

I am directed to transmit for the information and guidance of your Court, and of the Courts subordinate to you the annexed extract, from a General Letter, from the Honorable the Court of Directors, under date the 14th of April last, No. 1, of 1830, with a copy of the resolution passed thereon, by the Right Honorable the Governor in Council.

(Signed) D. ELIOTT.

Acting Register.

"*Extract from the Minutes of Consultation, dated 30th December*, 1831.

Ordered that copies of paras 5 and 6, be furnished to the Court of Sudr and Foujdaree Udalut, the Board of Revenue and the Special Agent for Foreign Settlement.

Foreign Department.

"*Extract from a General Letter from the Honorable the Court of Directors, dated 14th April, No.* 1, *of* 1830.

We approve of your having restored to the French authorities the lands claimed by them in the vicinity of Calicut and of Masulipatam on its being proved that those lands were in the possession of France at the breaking out of the war. We regret that you should have been unable to make any satisfactory arrangement for the acquisition by purchase or exchange of the lands at Masulipatam, in which the English had erected buildings and the possession of which by the French appears to be the source of much inconvenience. We conceive, however, that the French territory at Masulipatam being a Factory only, and not an independent possession, must, although the property of another nation, be still held to form part of the British dominions, and may at the discretion of your Government be subjected to any Regulations which may be found necessary for the security or good order of our own territory and of its inhabitants.

We approve the rule you have adopted of encouraging the adjustment of any ordinary questions which arise between the inhabitants of French and those of English territories by private agreement among the parties. You exercised a judicious liberality when you facilitated the settlement of one dispute, by authorizing the repair of a bridge at the public charge, the expense being inconsiderable.

(True extracts,)

(Signed) HENRY CHAMIER.

Chief Secretary."

17th January, 1832.

Two questions are submitted for consideration. The first question is, what penalty is to be levied under Regulation II. of 1825, on deeds written on paper, or other material bearing a stamp of less value than the prescribed stamp to render them admissible in a Court of judicature. Upon this point it appears to the Sudr Udalut to be quite clear that the penalty to be levied is a sum equal to ten times the amount of the prescribed stamp duty.

The Second question is, if for the execution of any of the instruments specified in Section XI. Regulation XIII. of 1816, it is necessary to use more than one roll of paper, of what value should be the stamp on the second and succeeding rolls. The Regulations do not provide expressly for the case; but upon the principle of the rules prescribing the use of stamps, the Court of Sudr Udalut are of opinion that provided the first roll bear a stamp of the prescribed value, the value of the stamp upon the second and succeeding rolls need not exceed the lowest rate of stamp in use.

30th January, 1832.

I am directed by the Judges of the Sudr Udalut to transmit for your information, and guidance, the accompanying copy of a letter to the Judges of the Provincial Court of Appeal in the Centre Division, containing the opinion of the Sudr Udalut, as to the power of a single Judge of a Court of Appeal to *suspend* the execution of an order of a lower

Court, under Clause first, Section II. Regulation VIII. of 1831.

(Signed) D. ELIOTT.

Acting Register.

"*To the Judges of the Provincial Court of Appeal in the Centre Division.*

GENTLEMEN,

I am directed by the Judges of the Sudr Udalut to acknowledge the receipt of the letter of Mr. Bushby, Acting Judge, dated the 20th instant, requesting the opinion of the Court of Sudr Udalut, whether any single Judge of the Provincial Court of Appeal and Circuit, under Regulation VIII. of 1831, can order the suspension of any order of the lower tribunals till the arrival of one of the absent Judges.

The provisions of Regulation VIII. of 1831, are not applicable to the Judges of the Court of Circuit.

By Clause first, Section II. Regulation VIII. of 1831, it is competent to a single Judge of a Provincial Court of appeal, sitting by himself to exercise all the powers vested in two or more Judges by former Regulations, excepting that he cannot without the concurrence of another Judge *alter* or *reverse* the decision or orders of a lower Court. It follows of course that a single Judge of a Provincial Court of Appeal, under Regulation VIII. of 1831, is competent to *suspend* the execution of any order of a lower Court in any case in which it was competent to two or more Judges to do so under former Regulations, until a decision can be passed in the manner prescribed by the Regulations upon an appeal from such order.

(Signed) D. ELIOTT.

Acting Register."

8th February, 1832.

It having been reported to the Sudr Udalut that in some Zillahs, the District Moonsiffs have been obliged to furnish stampt receipts for their salaries and fees, and the Court being of opinion that this practice is not authorized by Regulation XIII. of 1816, they direct that instructions be sent to the several Zillah, Assistant, and Native Judges in your Division, prohibiting it for the future.

15th February, 1832.

With reference to the Circular Letter, from this Office, dated the 21st October, 1825, relative to communications upon matters pending before the Sudr Udalut, transmitted through the channel of the public post, the Judges of the Sudr Udalut desire that you will cause the notification therein directed to be published, to be republished for general information in the same manner.

5th March, 1832.

I am directed by the Judges of the Sudr Udalut to transmit to you the annexed extract from the proceedings of the Sudr Udalut, under date the 22d ultimo, and to desire that you will furnish a copy thereof to the several subordinate Courts in your Division for their information and guidance respectively.

"*Extract from the proceedings of the Sudr Udalut, under date the 22d February*, 1832.

Read miscellaneous petition, No. 137, of 1831, presented by the Vakeel Hanoomunt Row, on behalf of Mr. G. F. Fischer, Merchant of Salem.

The petitioner, Mr. Fischer, was plaintiff in two original suits on the file of the Zillah Court of Salem, viz., No. 353, of 1830, and 71, of 1831, in each of which the defendant was a British subject. These suits were struck off the file by order of the Zillah Court, passed under date the 29th September, 1831, on the ground of Mr. Fischer, the plaintiff, being a British subject, in pursuance of the instructions contained in the proceedings of the Sudr Udalut, dated the 12th September, 1831, founded upon the opinions of two of the Company's Law Officers at Calcutta, that a British subject cannot be impleaded by another British subject in any of the country Courts.

Mr. Fischer being dissatisfied with the orders rejecting his suits on the ground stated, presented a petition to the Zillah Court, requesting the Judge to forward his appeal therefrom to the Sudr Udalut. The Zillah Judge declined to comply with this request as irregular, and directed the party to apply to the Provincial Court, as the authority competent to receive appeals from his orders, by petition in the usual manner through a Vakeel of the Court.

It appears that Mr. Fischer did then apply to the Provincial Court, but by letter, instead of petition, and that the Court in reply directed him to present a motion to the Sudr Udalut by an authorized Vakeel of the Court. The petition now before the Sudr Udalut has been presented in pursuance of that direction. The application to this Court to overrule orders of the Zillah Court is irregular. The petitioner ought to have applied to the Provincial Court by petition in the manner indicated by the Zillah Judge in his order, under date the 15th November, 1831. But the Petitioner having been misdirected by the Provincial Court, and the circumstances of the case being peculiar, the Court of Sudr Udalut have resolved to admit the petition, and proceed to pass orders upon it.

The Petitioner protests against the construction of the Law giving by the Company's Law Officers in Bengal and the rule founded upon it that a British subject cannot be impleaded by another British subject in any of the country Courts. Upon this point the Court of Sudr Udalut have deemed it advisable to obtain the opinion of the Company's Advocate General at this Presidency, which entirely coincides with that expressed by the Officers formerly consulted.* The petitioner, secondly, protests against the application of the above rule to him, on the ground that he is a Native British subject, having been born in India, and therefore entitled to all the privileges possessed by other Natives and fixed inhabitants of the country. The Court understand the petitioner to mean by the term "Native British subject," a person born in India entitled by descent to the privileges and liable to the obligations of a British subject. Upon this point also they have consulted the Advocate General and they concur in, and resolve to adopt, his opinion that "the statutes regulating the privileges and liabilities of British subjects," comprise within this denomination all natural subjects of the King who are of British descent, wherever they may happen to be born, as distinguished from those of Indian or Asiatic descent, wherever they may happen to be born," and that "all British subjects born in India must claim and submit to the same legal extent, and no further, as their fellow British subjects."

The Court therefore resolve to reject the petition on behalf of Mr. Fischer, praying that the orders of Zillah Court of Salem, dismissing original suit, No. 353, of 1830, and original suit, No. 71, of 1831, be over-ruled.

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* See proceedings 20th February, 1833.

16th April, 1832.

It being desirable, in order to enable this Court to judge more correctly of the labour performed by the subordinate authorities, to have a quarterly statement of all miscellaneous petitions received by them, disposed of, and remaining.—

Ordered, that a statement of miscellaneous petitions in the form of the statement of applications for special appeals, be annexed to the Quarterly Civil Reports, furnished by the several Courts.

25th April, 1832.

Under the Regulations the selection of persons to be appointed to the office of District Moonsiff is left to the Zillah and Assistant Judges, who are naturally disposed to give a more ready attention to the claims of those who have served or whose conduct has passed under their personal observation, than to the applications of others, who, whatever may be their claims, are not personally known to them. In consequence, the selection for this office is practically in a great measure restricted to the pleaders and ministerial officers of the Zillah Courts. It is however expedient, and has always been intended, that the pleaders and ministeral officers of the Provincial Courts and other public servants who are equally eligible, should have their claims fairly and equally considered, and that the office should be as readily open to them as to the others. The Court of Sudr Udalut deem it proper therefore to advise the Zillah Judges on occasions of vacancies, to make their selection for the office of District Moonsiff upon a general view of the claims of the persons qualified for it in both the Provincial and Zillah Courts and among the other candidates for appointment, and a fair consideration of their relative merits and abilities, giving its proper weight to length of service.

26th May, 1832.

The above return has suggested to the Court of Sudr Udalut the propriety of issuing instructions to the four Provincial Courts to report to them invariably the circum-

stances and the cause of a single Judge holding Court under Clause first, Section II. Regulation VIII. of 1831, when two Judges may, or ought to, be at the Sudr Station.

4th June, 1832.

I am directed by the Judges of the Court of Sudr Udalut to transmit for your information and guidance, the accompany copy of a letter addressed to the Judges of the Provincial Court of Appeal in the Northern Division, under this date.

(Signed) D. ELIOTT,

Acting Register.

To the Judges of the Provincial Court of Appeal for the Northern Division.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut to acknowledge the receipt of your letter, dated the 16th April last, requesting to be informed whether they "consider that a decree in appeal connot be executed without security before the expiration of the period allowed for special appeal; or, if an application has been made for the admission of a special appeal, before that application has been decided on."

The Judges of the Sudr Court concur with you in opinion, that the decree ought not to be executed without security in either of the cases above stated.

(Signed) D. ELIOTT,

Acting Register.

20th July, 1832.

The Court of Sudr Udalut have reason to believe that the practice of the lower Courts is not uniform, in respect to applications, preferred for the admission of a regular appeal in cases in which the applicant may have, in the first instance, moved for a review of judgment, or preferred a summary appeal.

In the cases here mentioned, it is the practice of the Sudr Court, in calculating the period limited for appealing

to exclude the interval, which may have elapsed between the filing of an application for a review, or a petition of summary appeal, and the passing of the order upon such application or petition.

And the Court of Sudr Udalut deem it proper, by a circular order, to direct that the same rule of practice be observed by the Native, Auxiliary, Zillah, and Provincial Courts.

14*th September*, 1832.

The Court of Sudr Udalut deem the present a fit occasion for calling the attention of the subordinate Courts to the provisions of Section X. Regulation XV. of 1816, from which they see reason to believe, that deviations are very generally prevalent.

Under the provisions of Clause third, of that Section, it is requisite that, in the trial of all original regular suits and appeals, the Court shall "consider and record the point or points, to be established respectively by the plaintiff or appellant, and by the defendant or respondent;" and it is prescribed in Clause fourth, that "no exhibit shall be filed, or witness summoned, unless expressly declared to be in proof or refutation of some point, upon which the Court may have directed that evidence should be taken."

The object of this rule as explained by Mr. Harington, at whose suggestion it was adopted, is "to prevent the time of the Civil Courts from being unnecessarily occupied by numerous irrelevant exhibits, and to save the attendance and examination of witnesses upon points not material to the issue of depending suits," and it is only by a strict adherence to these provisions, in all cases, that the evils here adverted to, can be effectually obviated.

The provisions of Clause second, of this Section, which, by the reference before the Court, appear to have been completely misunderstood, are intended only to procure the necessary information from the parties, when the pleadings may not be drawn with sufficient clearness and precision, or, from any other reason, further explanation may be requisite.

17*th September*, 1832.

A reference has been made to the Court of Sudr Udalut respecting the construction of that part of Section VIII.

Regulation XXV. of 1802, which refers to the registry of sales, and other transfers of land, and of the provisions on the same subject, contained in Section III. Regulation XXVI. of 1802.

The Provincial Court for the Southern Division have pointed out, that different constructions have been given to these provisions of the law, and have stated their opinion, that the object of the restrictions regarding the transfer of Zemindaree lands in those enactments, is the security of the public revenue, that they are not intended to affect the validity of claims for the recovery of such estates or portions of Zemindaries, though the transfer, on which the claim was founded might not have been registered at the office of the Collector, and that it is against the Government, that transfers of land, being unregistered, must be held to be not valid, and not against the transferers.

The Court of Sudr Udalut entirely concur with the Provincial Court in opinion, that the want of registry does not affect the validity of a sale of land, as between the seller and purchaser, and that an unregistered transfer is invalid only as respects the Government.

At the period of the enactment of the Regulations abovementioned, the Government were legislating between themselves, and the proprietors of Zemindaries, and their view extended no further.

It has been ruled repeatedly by the Sudr Court, that it is not in the power of any Court of Judicature to interfere with the Registry of lands; that Collectors are answerable, that no new registry is made without sufficient proof of a *bonâ-fide* transfer; that they alone have authority to perform the registry in the manner, and under the circumstances, set forth in the Regulations; and that a registry in other names cannot prevent a party's recovering lands, if adjudged to him by a judicial decree.

It has been judicially determined by the Sudr Court, in their decree in appeal No. 2, of 1827, that the registry of land in the name of a party is altogether insufficient to prove his right of property, and that taken at the best it only sets him up, as the ostensible proprietor; and that judgment virtually involved a decision upon the construction of the provisions under consideration, by affirming the title of a party to an estate, which stood registered in the name of another.

In consequence of the difference of opinion, stated to prevail on this subject, the Court have considered it proper

to give it a full discussion. It is sufficiently obvious that registry by the Collector cannot confer a title; and the converse of the proposition, namely that want of registry cannot take away a title to landed property follows as a necessary consequence.

It is of course wholly incompetent to the registering Officer to decide whether, or not, a transfer be conformable to the Hindoo or Mohummedan law; and any other construction of Section VIII. Regulation XXV. and Section III. Regulation XXVI. of 1802, than that declared in the 3d paragraph of these proceedings, would have the effect of estopping the jurisdiction of the established Courts in a matter, which it belongs to them exclusively to determine.

31*st December*, 1832.

Adverting to the paucity of cases decided within the quarter, by the several judicial authorities, the Court of Sudr Udalut have to observe that, in fixing the minimum of causes to be decided on their merits at 10 per mensem, the Court expected more. Finding that, so far from this being the case, many of the Zillah Judges decide less, they consider it proper to explain, through the four Provincial Courts, to the several Judges that the Court of Sudr Udalut will not in future be satisfied, without the most cogent reasons, with fewer decisions than 10 per mensem, and that any future omission to pass the requisite number of decisions, for which a satisfactory cause is not assigned, will form the subject of a representation to Government.*

28*th January*, 1833.

It appears to the Court that a literal observance of the provisions of Section V. Regulation III. of 1802, cannot often be possible, and as they observe from Harrington's Analysis that the Courts in Bengal use a discretion on this point, they see no reason why a similar course should not be observed in the Courts subordinate to this Presidency.

31*st January*, 1833.

I am directed by the Judges of the Court of Sudr Uda-

* See Circular Order, No. 4.

lut to transmit for your own information and guidance, and that of the Courts subordinate to you, the accompanying copy of a letter, and its enclosure, from the Secretary to Government in the Judicial Department, dated the 23d instant.

No. 74.

Fort St. George, 23*d January*, 1833.

Judicial Department,

GENTLEMEN,

I am directed by the Right Honourable the Governor in Council, to forward to you the accompanying statement of certain charges which have been authorized on emergent occasions, or for definite periods, and to request that you will intimate to the several officers under your orders, that none of them will be passed beyond those periods without further specified sanction, and that they are required to report from time to time the expediency of maintaining any establishments that may be allowed as a temporary arrangement.*

I have the honor to be,

GENTLEMEN,

Your most obedient Servant,

(Signed) T. R. WHEATLEY.

Secretary to Government.

To the Judges of the Sudr and Foujdaree Udalut.

20*th February*, 1833.

I am directed by the Judges of the Court of Sudr Udalut, with reference to their circular instructions, dated the 5th March last, to transmit to you the accompany copy of a letter dated the 8th instant from the Secretary to Government in the Judicial Department, together with the opinion of the advocate General in Bengal to which it refers relative to the power of the Civil Courts to try suits in which both parties are European British subjects, and to desire that you will issue instructions to the several subordinate Courts in your division, to adopt the opinion of

* See Fort St. George Gazette, 29th July, 1835.

Mr. Pearson as the correct interpretation of the intentions of the Legislature on the subject in question.

(Signed) J. C. MORRIS,

Acting Register.

Fort St. George, 8th February, 1833.

No. 131.

Judicial Department.

GENTLEMEN,

With reference to your Acting Register's letter of the 7th September last No. 128, I am directed by the Right Honorable the Governor in Council to transmit to you the accompany copy of one, and of its enclosures, from the Deputy Secretary to Government at Fort William dated the 15th ultimo, on the opinion of the Advocate General at that Presidency as to the power of the Civil Courts to try suits in which both parties are European British subjects; and to request that you will communicate the same to the Zillah and Provincial Courts under this Presidency, desiring them to adopt the opinion of Mr. Pearson as the correct interpretation of the intentions of the Legislature, with respect to the question under discussion.

(Singed) T. R. WHEATLEY.

Secretary to Government.

OPINION.

This is a case of considerably difficulty; but after the best attention which I can give to the subject, I feel myself obliged to dissent from the opinion expressed by Mr. Spankie and Mr. Fergusson. It is true that the preamble in Section CV. of the 53d G. 3, C. 155, would seem to limit the object of the subsequent enactments to the redress of injuries done to the natives, either such as are accompanied by force, or arise out of civil controversies. The provisions of Sections CV, and CVI, are in furtherance of this apparent object. But an enacting Clause, may go further than a Preamble. And supposing the Preamble in Section CV, applicable to Section CVII, yet the latter is, as I think, so explicit as not to require explanation from any other. By it, British subjects (under certain restrictions) are declared subject to the Jurisdiction of Courts in the Moffussil, "in the like manner as natives of India." It appears to me

that this is expressed in terms too general to be limited by those of the Preamble in the 105th Clause. They are in themselves intelligible and plain. They also afford grounds for believing that in the provisions of Section CVII. the legislature had further views than that of redressing injuries offered to the natives of India, I think a perusal of the whole of Section CVII. will lead to this conclusion. I will only add, that I am confirmed in thinking that Section CVII. applies to cases in which both parties are British subjects, and is not confined to those in which a British subject is defendant, and a native of India the plaintiff, by the Clause which follows next in order. For it will be seen that Section CVIII. provides that a British subject (not in the service of the King or the United Company) residing as in the former Clause, at the distance of more than ten miles from the Presidency, must procure a certificate of residence and deposit it "in the Civil Court of the District," before "he shall be allowed to have or maintain a civil action in it." In other words, he is to act in the manner prescribed before he can be the plaintiff in a suit. This clause is explanatory of the preceding, and upon a view of them, taken together, I feel little doubt that the construction I have given to them is correct. They contemplate, as I think, that a British subject may be either a plaintiff or a defendant in a cause.

Upon the whole I am of opinion that under Section CVII. both parties to a suit may be British subjects.

If I understand a-right, this is the only point on which the Court of Sudr Dewanny Udalut is desirous of my opinion.

(Signed) JOHN PEARSON,

(A true copy.)

(Signed) H. PAULIN,

Attorney to the Hon. Company.

(True Copies)

(Signed) J. F. M. REID,

Register.

25th March, 1833.

Read letter dated the 27th ultimo, from the Provincial Court of Appeal in the Western Division, submitting for

the determination of the Court of Sudr Udalut, two questions from the Assistant Judge of the Zillah Court of Canara.

The questions referred are, 1st., in the trial of "original suits is it lawful for the Judge or Assistant Judge, Register, &c., to dispense with the examination of witnesses named by parties in support of points which the Court have directed to be proved, or where the Court has neglected to give such direction, in support of allegations contained in the pleadings, and relevant to the matter at issue? 2dly, If the Judge (or Assistant Judge, &c.,) may do so at discretion, under what limitation is that discretion to be exercised."

In the former of the foregoing questions, the Assistant Judge would appear to suppose a case in which the Court, have omitted to direct evidence to be called to points relevant to the issue.

Such a case cannot of course be supposed; but the Court, under the provisions of Clause fourth, Section X. Regulation XV. of 1816, must restrict the evidence to the recorded points.

The Provincial Court state their opinion to be "that it is competent to the Officer trying a suit to limit, the examination of witnesses to each points, when three or four may have deposed to his satisfaction."

The Court of Sudr Udalut observe, that in a circular order of the Court of Sudr Dewanee Udalut at Calcutta, dated the 25th October, 1822, their opinion is stated, "that it would very materially promote the ends of Justice, if previously to rejecting evidence to any particular point as unnecessary, the Judge trying the cause would consider whether, or not, it is probable that such evidence (although not so deemed for his own satisfaction) may be deemed requisite by the Judge, before whom the cause may be brought on appeal."

It appears to the Court, that the consideration here intimated shews the expediency of examining all the witnesses, who may be produced to prove each point, in as much as it is not possible for the lower Court to determine, with any thing approaching to certainty, as to whether or not the Court of Appeal may deem essential, evidence, which, to the Court of original Jurisdiction, may appear superfluous.

There is also the further ground for adopting this course that the rejection of evidence tendered, by being made a ground of appeal, counteracts the object proposed of expediting the disposal of suits.

A strict attention on the part of all courts of original jurisdiction to the provisions of Section X. Regulation XV. of 1816 must go very far to prevent introduction of unnecessary evidence into the trial of civil suits.

The Court of Sudr Udalut, being of opinion that it is desirable that their sentiments on the present reference should be generally adopted, direct that extract of these proceedings be sent to the four Provincial Courts of Appeal by precept, commanding them to communicate the same to the Courts subordinate to them respectively for their information and future guidance.

3d May, 1833.

I am directed by the Judges of the Court of Sudr Udalut to inform you that Government have resolved to abolish the present system of remunerating District Moonsiffs by fees, and that these officers shall, for the future, be divided into three classes, to be established, with reference to the quantity of work to be performed by them respectively; and that the salary of the 1st class shall be fixed at 140 rupees per mensem, that of the 2d at 115 rupees, and of the 3d at 100 rupees; with an establishment at 85 rupees for the 1st, at 70 rupees for the 2d, and 60 rupees per mensem for the 3d class of Moonsiffs.

The Judges direct me to transmit to you the accompanying statement*, shewing the class to which each District Moonsiff in your jurisdiction is proposed to be assigned, and desire that you will report to them in *five days* from the receipt of this letter whether, or not, you would recommend the removal of any Moonsiff, or Moonsiffs, from one class to another, it being clearly understood that the numbers for each class are to stand as in the statement now forwarded.

You will observe that the District Moonsiffs within the jurisdiction of the Native Judges of Chicacole, Cuddapah, and Canara are included in this reference.

6th June, 1833.

The Judges of the Sudr Udalut having had occasion to notice that some misapprehension prevails as to the course to be observed when application may be made to a Judge to

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* Omitted.

enforce a decree of another Court, I am directed by them to inform you, that the following is the proper mode of proceeding to be pursued in cases in which application may be made to one Court to execute the decrees of another of co-ordinate jurisdiction.

The Court, on receiving a duly authenticated copy of the decree, and being moved by the proper party, to cause execution of it, should proceed to enforce it, unless the other party can show that it has been already satisfied. The decrees of one Court must be received, by another of co-ordinate jurisdiction, as evidence of a regular adjudication of the claims to which they refer; and therefore no inquiry can be gone into as to the merits of the original suit, for that would subject the party to the trouble and expence of a new suit. The duty of the Court applied to would appear to be confined to the execution of the decree produced before it. Of course it is for the Court to ascertain the party against whom the decree is to be enforced.

10th June, 1833.

I am directed by the Judges of the Court of Sudr and Foujdaree Udalut, under authority granted by Government, to desire that you will issue instructions exempting the Law Officers of the several Courts in your Division from the necessity of attending at the Court House to receive their pay, as directed by the orders of Government, dated the 12th April.

15th August, 1833.

The Court of Sudr Udalut having had occasion to observe that the practice in the several Zillah Courts, in respect to the period allowed for the admission of special appeals, is not uniform, resolve to circulate the following extract from their proceedings, under date the 17th July, 1833, to the four Provincial Courts of Appeal, by precept, enjoining them to communicate the same to the several Zillah Courts in their respective Divisions, for their information and future guidance.

Extract from the Proceedings of the Sudr Udalut, under date the 17th July, 1833.

"Read return, dated 27th June, from the Provincial Court

of Appeal in the Northern Division, to precept of the 10th June, 1833, directing the Zillah Judge of Nellore to dispose of, on its merits, an application from a person named Maramundy Croostnama Charloo, for the admission of a special appeal.

The Zillah Judge, in his return dated the 22d ultimo, states, "that ever since special or second appeals from the decisions of the Sudr Ameens and Registers in regular appeals have been allowed under Section II. Regulation II. of 1823, the time for such second appeal has been considered by" that "Court only one month, as it is provided in Clause second, Section IV. Regulation XV. of 1816, that the party desirous of a second appeal should present the petition within the limited period prescribed for the admission of regular appeals, and the limited time for admission of the regular appeals from the decisions of the Sudr Ameens and Registers is restricted to one month only, under Section XV. Regulation VIII. of 1816, with reference to Clause third, Section VI. Regulation VII. of 1809, and Clause second, Section X. Regulation XII. of 1802."

Section II. Regulation II. of 1823, declares, that "a second or special appeal shall be admissible by the Judge of a Zillah Court from any decree passed by a Register or Sudr Ameen within his jurisdiction, subject however to the same rules and restrictions as are prescribed for the admission of special appeals by the *Provincial Courts*."

One of these "rules" is that the limited period of appeal is three months, and the use of the word "periods," in the plural number, in Clause second, Section IV. Regulation XV. of 1816, was, at the time when that Regulation was enacted, unmeaning, because the period for the admission of regular appeals by the Provincial Courts and the Sudr Udalut (the only Courts referred to) is one and the same, under Clause fourth, Section XII. Regulation IV., and Clause fifth, Section X. Regulation V. of 1802.

Still, upon full consideration of the question, the Court are disposed to think that the Zillah Court's construction of the provisions of the law is the correct one, and that in applying, under Section II. Regulation II. of 1823, to the Zillah Court the provisions of Clause second, Section IV. Regulation XV. of 1816, the period for the admission of a special appeal should be taken to be that prescribed for the admission of a regular appeal from decrees of Registers and Sudr Ameens.

There seems to the Court to be no reason for the distinction which by the letter of the rule *might* be made, and Clause second, Section IV. Regulation XV. of 1816, clearly sanctions the construction which has been adopted.

The application to which the above return refers, having been admitted, with a view to its being disposed of on its merits, no further orders on the subject are necessary.

Ordered, that extract from these proceedings be sent to the Provincial Court in the Northern Division by precept, directing them to communicate the same for the information and future guidance of the Zillah Judge of Nellore.

4th September, 1833.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the enclosed extract from the Minutes of Consultation, under date the 16th ultimo, and to desire that copies of the same may be circulated to the several Zillah Assistant and Native Judges within your Division, for their information and future guidance.

Extract from the Minutes of Consultation, under date the 16th August, 1833.

"The Governor in Council does not understand whether the Judges of the Sudr Udalut are satisfied of the sufficiency of the excuses offered by the Judge, Mr. Strombom, to account for his not having decided any cause during the third quarter. He thinks it proper to remark, however, that whenever a public Officer labours under indisposition so severe as to prevent him from doing his duty, it is incumbent on him to report it, in order that he may be relieved, and a fit provision made to render the Court effective. It is presumed that the indisposition of the Judge was not so great as to prevent him from holding a Court three days in each week as required by Regulation II. of 1802; but it is not sufficient to hold a Court merely *pro formâ*, if the Judge is unable to try causes."

4th October, 1833.

The Right Honorable the Governor in Council being of opinion that it would be attended with advantage to have a general Register, in the office of the Sudr Udalut, of all the natives employed under this Presidency in the judicial

offices, and of the principal officers of all the Courts, containing a full and particular account of the services of each person, shewing distinctly all the offices in which he has been employed and the period of service in each, and such a report upon his character and qualifications as the officer under whom he is employed is able to furnish from his own observation and experience, or from the records of his office, and from any authentic and credible testimonials or certificates which the individual may be able to produce, I am directed by the Judges of the Court of Sudr Udalut to desire that you will furnish them with the requisite information in regard to your Court, to enable them to prepare a general Register of this description, and that you will, in the month of January of each succeeding year report any alterations or changes that may have occurred in your, Court establishment, and which may render necessary a corresponding alteration in the General Register.

22*d November*, 1833.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the accompanying copy of a letter addressed by them to Government, and to desire, under the orders of the Right Honorable the Governor in Council, that you will issue instructions to the several Zillah and Assistant Judges in your Division, to act in strict conformity with the opinion therein expressed, as to the course to be adopted on their assuming charge of the property of a British European subject, under the provisions of Section V. Regulation IV. of 1809.

You will be pleased to direct the Acting Judge of Chittoor to act in accordance with these instructions with respect to the estate of the late J. Blanshard, Esq.

(No. 121.)

" *To the Officiating Secretary to Government in the Judicial Department.*

SIR,

I am directed by the Judges of the Sudr Udalut to acknowledge the receipt of your letter of the 25th ultimo, No. 842, transmitting a letter from the Registrar of the Supreme Court, administrator to the estate of the late Mr. Blanshard, and desiring that they will state their opinion whether it is the duty of a Judge assuming charge of the

property of a British European subject, who has died within his jurisdiction, under Section V. Regulation IV. of 1809, to take account of the effects, and to furnish a full and perfect inventory to the Registrar of the Supreme Court.

It appears to the Judges that the object of the Statute, referred to in Section V. Regulation IV. of 1809, is obviously the safe custody of the estates of British subjects dying intestate beyond the limits of the Supreme Court, and they agree with Mr. Cator in thinking that, unless an inventory full and perfect be *immediately* taken by the Zillah Judge, on his assuming the temporary charge of the intestate's estate, the latter cannot possibly know when the estate is wasted or stolen.

It is true the Regulation does not specially state that the Zillah Judge shall take such an inventory, but taking the Section in connexion with Clause seventh, Section XVI. Regulation III. of 1802, to which it refers, the Judges are clearly of opinion that it was the intention of the Legislature that such course should be adopted."

2d April, 1834.

To the Four Provincial Courts.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut, to forward the accompanying copy of paras, 2, 3, 4, and 5, of a letter, under date the 22d February, 1834, received from the Officiating Secretary to Government in the Judicial Department, conveying the orders of Government, on the statements of contingent charges incurred during Fusly, 1242, in the several Courts, in this Presidency, and to desire that particular attention be paid to the orders therein contained, and further, that the same may be communicated, to the several Subordinate Judicial authorities in your division, and to such Magistrates, as may have the superintendence of the Gaol Department, for their information and guidance respectively.

Extract of a Letter from the Officiating Secretary to Government in the Judicial Department, dated the 22d February, 1834.

"It is to be understood that the sanction of Government, for the several charges now passed, is conditional, depending of course upon the production of the requisite accounts par-

ticulars, and vouchers to support them, when they are examined in the Office of Audit.

The Governor in Council thinks it proper that the account particulars of extra servants entertained under a sanction for an indefinite period, should be submitted with the statement of charge.

You will be pleased to repeat the orders prohibiting the employment of extra servants without previous sanction, and to remind the Officers subject to your authority of the rules published, under date the 4th December, 1832, respecting contingent charges, with an intimation that sanction will, in future, be with-held for any servants entertained, or for any charges incurred, contrary to those orders and rules.

In order to facilitate reference, you will be pleased to direct the Officers under your controul to number consecutively the several charges in future."

14*th April*, 1834.

Read Extract from the Minutes of Council, under date the 1st instant, with copy of a despatch from England, on the subject of the new Act of Parliament, respecting appeals from the Decrees of this Court, to His Majesty in his Privy Council.

Ordered, that translations of Sections 22, 23, and 24, of the Act in question, into the native languages, be read, and publicly affixed in this Court, for general information. It is particularly to be observed, that if, within 2 years from the date of the *admission*, by this Court, of an Appeal to the king in Council, the parties thereto do not take the necessary measure to bring it to a hearing in England, it will be liable to be brought to a hearing, by the Company, at the expence of the parties.

Ordered that a copy of the papers above mentioned be transmitted to the Four Provincial Courts, with precept, requiring them to affix translations in the native languages, for their respective divisions, of the said Sections, in a conspicuous place of their Court, and to cause the same to be publicly read in Court, for general information, and directing them to serve, upon the parties to the appeals specified in the 3d para, of the despatch from England, resident in their jurisdiction, or upon their heirs, or representatives, notice that the said appeals will accordingly be brought to a hearing by the East India Company, at their expence, before His Majesty in Council.

With reference to the fourth para, of the said despatch, and to the Minutes of Council respecting it, the Judges would recommend that, to cover all expences attending appeals to England, the security required from the Appellant be raised from Sicca rupees 8,200, to Sicca rupees 20,000, a sum by no means exceeding what appears may be expended in many of the very extensive, voluminous, and intricate cases in question. But before adopting this proceeding they resolve to submit it for the consideration of the Right Honorable the Governor in Council.

12th May, 1834.

To the Four Provincial Courts of Appeal.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut to transmit to you, for the purpose of being circulated to the several Courts in your division, the annexed copy of an order from the officiating Secretary to Government in the Judicial Department, dated 29th ultimo, together with the rules to be observed by the several Zillah Judges within your Division, when British subjects may die intestate within their jurisdiction.

I have the honor to be, &c.,

(Signed) W. DOUGLAS,

Actg. Senior Deputy Register.

No. 311.

"*Order of Government on Sudr Udalut, Letter No.* 27, *dated* 11*th April*, 1834.

As it appears, from the above letter, that there are no objections arising out of any Act of Parliament to the adoption of the rules,* proposed by the Registrar of the Supreme Court, as modified by the Sudr Udalut, the Governor in Council resolves that the Sudr Udalut be directed, with reference to their Register's letter, dated the 11th instant, to circulate the same for the information and guidance of the Officers concerned."

(Signed) D. ELIOTT,

FORT ST. GEORGE, 29*th April*, 1834. } *Offg. Secretary to Government.*

The special attention of the Zillah Judge is required to the provisions of Section V. Regulation IV. A. D. 1809, regarding the estates of European British born subjects, and to the following explanatory Rules on the subject.

1. Upon the death of any British born subject, not being a Military Officer or Soldier in the Service of His Majesty, or the East India Company, whether Intestate or otherwise, except in the case of an executor or executrix appointed by the deceased, and such executor, or executrix, signifying to the Zillah Judge in writing his, or her, intention to execute that office, the effects of the deceased are to be secured by a Public Officer of the Court under the authority of the Judge of the Zillah in which the deceased's property is situated, within four and twenty hours from the time of the death, or, if the effects are at a distance from the Zillah Court, as soon as possible after the death shall have been known to the Zillah Judge; all the plate, jewels, and other valuables, are to be brought for safe custody in the Treasury of the Court and there kept till the sale or other disposition of them by the executor or administrator.

2. The Judge is without delay to cause to be made a correct inventory of the whole of the property and effects mentioning especially, and in all cases, whether any and what amount of cash was found in the deceased's possession. The Judge is also to procure such information as to the surviving relations of the deceased, whether in India or elsewhere, as can be obtained on the spot, and the same is to be entered in a book to be kept for that purpose to be entitled "Register of estates;" the page of every entry to be signed by the Judge, and, at the foot of every entry, the signatures of the Officers of the Court employed in taking the Inventory are in their own proper hand writing to be subscribed thereto, and such Book shall form a record, and a copy of such Inventory and of such information shall be, forthwith, forwarded to the Registrar of the Supreme Court, such copy to be attested "a true copy from the entry in the Register."

3. In the case of a Will, except as stated above, where there may be an executor, or executrix, appointed by the deceased, and such executor, or executrix, may signify to the Zillah Judge in writing his, or her, intention to execute that office the Judge shall, together with the copy of the Inventory mentioned in para 2, forward to the Registrar of the Supreme Court a copy of the Will. The Judge shall also forward to the Executors, in case they are within the "Pre-

sidency of Madras, a copy of the Inventory and of the Will.

4. The Zillah Judge shall, at the request of the Registrar of the Supreme Court when appointed Administrator, appoint a proper person, or persons, to effect the disposal of the property of the deceased and shall attend as nearly as he can to the wishes of the said Administrator expressed in writing.

5. When the Zillah Judge directs a sale, in pursuance of the request of the said administrator, such sale shall be by public auction to the highest bidder and the conditions of every such sale, unless otherwise specially directed by the said Administrator, shall be the following.

"1st. The lots to be paid for before delivery and removal by the purchasers.

2d. All goods to be at the risk of the purchasers from the time of sale, and such as remain three days beyond the first issue of pay next following the sale, to be resold by similar Public sale: the first purchaser to be held liable for any loss arising from such resale and to forfeit any advantage together with commision. Immediately after the sale the account sale together with the names of the several Purchasers shall be entered "in the Register of estates," and a copy of such account sale shall be, forthwith, forwarded to the said Administrator attested as directed in para 2."

6. The Auctioneer shall, in no case, receive a greater per centage, or remuneration, than 5 per cent., which shall be paid by the Zillah Judge on the day on which the accounts of the estate are finally closed, if his accounts are correct, but not otherwise.

7. A Zillah Judge quitting, or being relieved from the charge of, his situation, shall render to the Judge succeeding to such charge, the account of every estate whether of an Intestate or otherwise, the accounts, and balance, of which shall not have been then already rendered, to the said administrator and such succeeding Judge will be held responsible for the correctness of the account unless, at the time of receiving charge of the Court, he objects to the account and brings such objection to the notice of the said Administrator.

8. In case of any Zillah Judge dying, or being, by sickness, incapacitated from rendering any account, the Register, or other Officer in charge of the Court, or, in his absence, the Nazir, the Sheristadar, and Native Register of the Court having formed themselves into a Committee for that purpose (which in such case they are hereby required to do) shall take an account of all estates of British born subjects

deceased whether of Intestates or otherwise, the accounts, and balances, of which shall not have been then already rendered to the said administrator, and (the committee so assembled) shall render the accounts taken to the Judge succeeding to the situation in case of such death or sickness.

9. Zillah Judges will be held responsible for the strict fulfilment of the several provisions of this order, and for any loss which may arise by a deviation therefrom.

The foregoing rules apply exclusively to British born subjects, the rules as to other Europeans are contained in Section XVI. Regulation III. 1802.

10*th June*, 1834.

Read Extract from the Minutes of Council of the 3d instant, respecting a letter from Mr. Miles.

The Judges have given their best attention to the subject submitted for their consideration; and are not aware of any objection to the construction given by the Governor in Council to the provisions of Cap. 85, 3d, and 4th. William Fourth, Section 81. They resolve therefore immediately to issue the following Circular Order, making known this construction of the law.

"By the Act of Parliament cap. 85, 3d, and 4th. William Fourth, Section 81, published for general information in the Fort St. George Gazette, under date the 16th May, 1834, it is declared to be lawful for any natural born subject of His Majesty to reside at any place having a Custom House established within the Territories under the Government of the East India Company without any license whatever. And to proceed and reside in the interior of such territories as were in the possession of the Company on the 1st January 1800, or were ceded by the Nabob of the Carnatic. Any British born subject, residing at such places without a license, but having duly reported himself to the proper officer of the Customs, or other authorized public officer, is entitled to all the rights and privileges to which a British born subject was entitled by virtue of a certificate issued to him in conformity with the provision of Section 108 Cap. 155, 53d Geo. III., while that act continued in force.

Resolved therefore that the several judicial tribunals be instructed to consider Section 108, of the Act of the 53d of George the third, contained in Regulation II. 1820, modi-

fied, by the act of the 3d, and 4th of William the fourth published in the Gazette, to the extent above explained; and that all British born subjects be admitted to sue in the Zillah Courts on producing a certificate of their having duly registered themselves in the Office of the Collector of Customs or other Officer authorized for this purpose."

Ordered that extract from the foregoing proceedings be transmitted to the four Provincial Courts for the guidance of themselves and of all the Judicial and Magisterial authorities under them.

The Governor in Council will observe that this order will embrace the case of Mr. Miles referred to in the Minutes of Council, and render any specific reference to it unnecessary, which, as his case is not actually before them, the Judges are disposed to consider the more regular course.

Ordered, that extract from these proceedings be sent to the Officiating Secretary to Government in the Judicial Department for the purpose of being laid before the Right Honorable the Governor in Council.

28th June, 1834.

Read again extract from the Minutes of Consultation of the 16th ultimo, containing the observations and orders of Government, upon the review of the report submitted under date 15th January last, of the operations of the Civil Courts, during the last six months of 1832.

* * * *
* * *
* * *

Ordered, with reference to the instructions in para 13, that the four Provincial Courts direct the Judges to state, specifically, in their letters accompanying the Quarterly returns, the period during which they or their Registers may have been absent in the quarter.

Extract from the Minutes of Consultation, under date the 16th May, 1834.

13. "The Governor in Council desires that the names of the Judges, Assistant Judges, and Registers, may be inserted in future in the abstract statements entered in the body of

the report, and that it may be noted in the column of remarks whether the Judge, &c., was present during the whole period embraced in the statement, or if absent temporarily, for what time; columns should be introduced into the statement in para 2, of the report to shew how many of the suits instituted before the Judge, &c., are placed on his own file and how many are referred."

28th June, 1834.

Read again extract from the Minutes of Consultation of the 16th ultimo, containing the observations and orders of Government, upon the review of the report, submitted under date 15th January last, of the operations of the Civil Courts, during the last six months of 1832.

* * *
* * *

Ordered that para 9, directing that the Native Judges be required to pass 15 decrees in each month on the merits, be forwarded to the Provincial Courts, in the Western, Centre, and Northern, Divisions, for the future guidance of the Native Judges, with an intimation that this Court will expect a full explanation of any omission to conform to these orders of Government, whenever the state of the files in their Courts shall admit of the disposal of the required number.

Extract from the Minutes of Consultation, under date the 16th May, 1834.

"It is remarked that the total number of suits decided on the merits by the three Native Judges of, Vizagapatam, Cumbum, and Sirsee, in this half year, was only 41, viz., Vizagapatam 15, Cumbum 12, and Sircee 14. The Governor in Council is exceedingly dissatisfied with the work done by these officers, which, contrasted with that performed by the Sudr Ameens, reflects great discredit on them: considering the advantages they possess he thinks that the minimum number of suits to be decided monthly by the Native Judges should be fixed at one half more than that established for the European Judge viz., 15, and they should be strictly called to account for falling short of that average."

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